



Commonwealth of Massachusetts
**DEPARTMENT OF HOUSING &
COMMUNITY DEVELOPMENT**

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Low Income Housing Tax Credit Program

2004 Qualified Allocation Plan

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Commonwealth of Massachusetts

Department of Housing and Community Development

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Section I. Federal Requirements of the Qualified Allocation Plan

Each year, the state allocating agency for the federal Low Income Housing Tax Credit is required to publish a plan describing how it intends to award the credit. The requirement that states publish a plan was established in the Omnibus Reconciliation Act of 1989. The plan is called the Qualified Allocation Plan, or QAP.

In the Commonwealth of Massachusetts, the Department of Housing and Community Development, or DHCD, is the allocating agency for tax credits. The Department is responsible for preparing the annual allocation plan and making it available for review by interested members of the public before final publication.

Section 42 of the Internal Revenue Code is the federal statute governing the tax credit program. In accordance with Section 42(m), each state allocating agency must include the following in the annual allocation plan:

- Selection criteria for projects receiving tax credit allocations
- Preference for projects serving the lowest income tenants and for projects serving tenants for the longest period of time
- Preference for projects located in qualified census tracts, the development of which will contribute to a concerted community revitalization plan. (Qualified census tracts now are defined as tracts either in which 50 percent or more of the households have income less than 60 percent of the area median gross or with a poverty rate of 25% or greater.)

In addition, Section 42(m) states that the selection criteria must take into consideration the following project, community, or development team attributes:

- Location
- Need for affordable housing
- Project characteristics
- Sponsor capacity
- Tenants with special needs as a target population
- Public housing waiting lists
- Individuals with children as a target population
- Projects intended for tenant ownership

The 2004 Qualified Allocation Plan prepared by the Department of Housing conforms to all the plan requirements summarized in the paragraphs above. In preparing the QAP, the Department has paid particular attention to the first three project attributes (location, need and project characteristics) in order to implement the Commonwealth's development principles and to address the critical need to produce new housing in Massachusetts.

The 2003 Qualified Allocation Plan also reflects the priorities of Governor Mitt Romney. In June 2003, Governor Romney announced a series of actions and principles to guide a newly created Office for Commonwealth Development (OCD). OCD is an umbrella agency responsible for coordinating the mission and activities of the state's housing, transportation, environmental and energy agencies so that

planning and development decisions result in stewardship of resources, wise investments in infrastructure, and opportunity for all Massachusetts residents. In order to achieve its objectives, OCD will encourage cooperation and coordination among agencies, invest public funds in sustainable development, and give priority to investments that deliver living wage jobs, transit access, housing, open space and community-serving enterprises. The agency is further guided by ten Sustainable Development principles. The ten principles are listed below and on the following pages. The Department has incorporated the ten principles into the tax credit scoring system in the Design section of Fundamental Project Characteristics and in the section titled "Special Project Characteristics", (see page 33).

The ten principles are:

1. **Redevelop first.** Support the revitalization of community centers and neighborhoods. Encourage reuse and rehabilitation of existing infrastructure rather than the construction of new infrastructure in undeveloped areas. Give preference to redevelopment of brownfields, preservation and reuse of historic structures and rehabilitation of existing housing and schools.
2. **Concentrate development.** Support development that is compact, conserves land, integrates uses and fosters a sense of place. Create walkable districts mixing commercial, civic, cultural, educational and recreational activities with open space and housing for diverse communities.
3. **Be fair.** Promote equitable sharing of the benefits and burdens of development. Provide technical and strategic support for inclusive community planning to ensure social, economic and environmental justice. Make regulatory and permitting processes for development clear, transparent, cost-effective, and oriented to encourage smart growth and regional equity.
4. **Restore and enhance the environment.** Expand land and water conservation. Protect and restore environmentally sensitive lands, natural resources, wildlife habitats, and cultural and historic landscapes. Increase the quantity, quality and accessibility of open space. Preserve critical habitat and biodiversity. Promote developments that respect and enhance the state's natural resources.
5. **Conserve natural resources.** Increase our supply of renewable energy and reduce waste of water, energy and materials. Lead by example and support conservation strategies, clean power and innovative industries. Construct and promote buildings and infrastructure that use land, energy, water and materials efficiently.
6. **Expand housing opportunities.** Support the construction and rehabilitation of housing to meet the needs of people of all abilities, income levels and household types. Coordinate the provision of housing with the location of jobs, transit and services. Foster the development of housing, particularly multifamily, that is compatible with a community's character and vision.
7. **Provide transportation choice.** Increase access to transportation options, in all communities, including land and water based public transit, bicycling and walking. Invest strategically in transportation infrastructure to encourage smart growth. Locate new development where a variety of transportation modes can be made available.
8. **Increase job opportunities.** Attract businesses with good jobs to locations near housing, infrastructure, water, and transportation options. Expand access to educational and entrepreneurial opportunities. Support the growth of new and existing local businesses.
9. **Foster sustainable businesses.** Strengthen sustainable natural resource-based businesses, including agriculture, forestry and fisheries. Strengthen sustainable businesses. Support economic development in industry clusters consistent with regional and local character. Maintain reliable and affordable energy sources and reduce dependence on imported fossil fuels.
10. **Plan regionally.** Support the development and implementation of local and regional plans that have broad public support and are consistent with these principles. Foster development projects, land and water conservation, transportation and housing that have a regional or multi-community benefit. Consider the long-term costs and benefits to the larger Commonwealth.

During 2004, the Department will continue to examine its use of the Sustainable Development principles in evaluating projects that request assistance. Future Qualified Allocation Plans may have more explicit requirements for projects seeking tax credit allocations in order to assure their consistency with the principles. The Department intends to work closely with the development community and will seek their input in determining appropriate criteria.

In preparing the 2004 plan, the Department also evaluated various measures and indicators of affordable housing need in Massachusetts. The measures or indicators included the number of households on public housing waiting lists; average and median sales prices and rental rates, both statewide and in various regions; vacancy rates for rental housing; median household income, both statewide and in various regions; number of households living below the federal poverty level; and so on. More detailed information on housing need is presented in a later section of this allocation plan.

After evaluating the available information on housing need and reviewing the comments and suggestions from interested parties, the Department has established in this allocation plan its priorities for allocating the housing credit in 2004. The Department intends to allocate credit to:

- 1) projects that create new affordable housing units, in particular units suitable for families
- 2) projects that are consistent with the ten Sustainable Development principles
- 3) projects that are part of comprehensive neighborhood improvement plans or initiatives, including HOPE VI projects with approved federal grants
- 4) projects that preserve valuable existing affordable units
- 5) projects that include units for individuals or households with incomes below 30% of area median income
- 6) projects with low per-unit costs

This allocation plan also sets forth the application process and scoring system for 2004.

It is important to note that the priorities included in this plan to some extent are priorities for the Department's other affordable housing programs as well. This is true for two reasons. First, tax credit projects often require other DHCD resources in order to proceed. Thus, the priorities established for the tax credit program have a direct impact on DHCD's other production programs. For example, when DHCD, through the tax credit allocation plan, establishes recommended cost limits for tax credit projects, the cost limits clearly apply to other DHCD programs in support of the same project.

The second reason is that the tax credit program, through the annual allocation plan, undergoes greater and more frequent scrutiny than other DHCD housing production programs. Although other production programs have guidelines and regulations that are modified from time to time, the

annual tax credit allocation plan is the public document in which the Department most clearly and most frequently attempts to state its priorities for state-assisted affordable housing projects.

Section 42 also requires allocating agencies to make an allocation plan available for public review and comment before publishing a final plan. In preparing the 2004 plan, the Department encouraged interested parties to comment before the plan was developed. As it prepared the 2004 plan, the Department encouraged suggestions and comments from housing professionals, other experts, municipal officials, and concerned citizens and conducted several discussion groups on important tax credit issues. Housing professionals and experts representing a wide range of interests and specialties participated in these discussions and contributed to the development of the 2004 allocation plan. The Department wishes to publicly acknowledge their contribution, and to thank them for their time and effort. Finally, in accordance with code requirements, the Department presented the draft allocation plan for public review and comment at a public hearing held on January 5, 2004.

Section II. Federal Credit Available in 2004

As of the date on which this allocation plan becomes final, the Department of Housing and Community Development anticipates having a total of \$3,135,679 in 2004 federal credit available for allocation during 2004. In accordance with Internal Revenue Code Section 42 and Treasury Regulation 1.42 - 14, the credit available for allocation consists of:

- 1) \$11,570,042 in per capita tax credits, based on the factor \$1.80 multiplied by the Massachusetts estimated population of 6,427,801 (based upon IRS Notice 2002-21); less,
- 2) \$1,360,000 in 2004 credit forward committed to Maverick HOPE VI under the Set-Aside outlined in the Massachusetts 2003 Qualified Allocation Plan; less,
- 3) \$8,434,363 of 2004 binding commitments made under the Massachusetts 2003 Qualified Allocation Plan.

The total amount of tax credits available for allocation in 2004 is subject to change. Additional credit may become available if projects that received allocations in prior years return tax credits to DHCD. Additional credit also may become available in the case of a cost of living adjustment determined in accordance with the Internal Revenue Code Section 42; or if national pool credit is allocated to the Commonwealth of Massachusetts. In addition, Massachusetts state tax credits will be available for allocation during calendar year 2004. The provisions of this allocation plan will apply to the total amount of tax credits the Commonwealth of Massachusetts is authorized to allocate during 2004. The evaluation criteria and selection process for applications submitted during 2004 are included in later sections of this plan.

MHFA and MassDevelopment tax-exempt bond financed projects: DHCD has delegated authority to the Massachusetts Housing Finance Agency (MHFA) and MassDevelopment to administer tax credits used in conjunction with tax-exempt bond-financed projects that are subject to the state's private activity bond volume cap. Such tax credits do not count against the state's per capita tax credit allocation cap and, therefore, these projects do not have to compete for credits through the DHCD funding round process. However, these non-competitive projects must meet threshold requirements of the Qualified Allocation Plan. Sponsors of bond-financed credit projects should contact staff at the Massachusetts Housing Finance Agency (617-854-1371) or MassDevelopment (617-330-2000) to discuss the application process for tax-exempt financing and the 4% credit.

Section III. Impact of December 2000 Federal Legislation

On December 15, 2000, the U.S. Congress passed long-awaited legislation increasing the per capita tax credit authority for all states. As a consequence of the legislation, each state received annual tax credit allocating authority of \$1.75 per capita subject to a cost of living increase during 2004. The increase in allocating authority is very welcome and for 2004 the Commonwealth's allocation will be based on \$1.80 per capita. DHCD anticipates fully allocating all available credit during two funding competitions scheduled for 2004.

In addition to providing a per capita increase, the December 2000 legislation required all states to incorporate certain changes in their annual Qualified Allocation Plans. Based on an advisory memo to all state allocating agencies from the National Council of State Housing Agencies (NCSHA), DHCD incorporated the following program changes in the 2002 QAP. These changes remain in effect in the 2004 QAP.

- In accordance with the December 2000 law, the 2004 QAP must give preference to community revitalization projects located in qualified census tracts. (Please note that the Commonwealth of Massachusetts QAP's historically have given preference to such projects.)
- In accordance with the law, the 2004 QAP requires every tax credit applicant to submit a market study of the housing needs of low income individuals in the area to be served. A non-related party approved by DHCD must conduct the study at the developer's expense.
- In accordance with the law, DHCD will continue its practice of conducting regular site inspections to monitor compliance. (Please note that DHCD inspects projects at least once every three years.)
- In accordance with the law, DHCD will make available to the general public a written explanation of any allocation not made "in accordance with the established priorities and selection criteria of the agency."
- In accordance with the law, DHCD will permit sponsors of tax credit projects that receive allocations "in the second half of the calendar year" to qualify under the ten percent test within six months of receiving the reservations, regardless of whether the 10% test is met "by the end of the calendar year." (Please note that developers who receive reservations during the first half of a calendar year must meet their ten percent deadline by the end of the calendar year, or by an earlier deadline established by DHCD.) In addition, and in accordance with NCSHA's recommended industry practices, DHCD will require that developers provide a certified accountant's opinion relative to the ten percent test. (DHCD previously accepted an attorney's opinion as the standard.) The accountant's opinion must be in the format prescribed by NCSHA.

A copy of the December 2000 legislation is included in an appendix to this allocation plan.

Section IV. Executive Order 418 and The Massachusetts State Housing Tax Credit

Two state level actions continue to have an impact on the Low Income Housing Tax Credit Program in Massachusetts in 2004. They are Executive Order 418, and the enactment of the statute creating the Massachusetts Low Income Housing Tax Credit Program.

Executive Order 418

Executive Order 418 strongly encourages all Massachusetts municipalities to take steps to provide housing opportunities to individuals and households across a “broad range of incomes.” Communities that comply with the Executive Order are given a competitive advantage in seeking critical funding resources from agencies including the Department of Housing and Community Development. During 2004, applications submitted from municipalities that have complied with the Executive Order will receive a 14-point bonus in the tax credit competitive scoring process. Thus, applications that meet all threshold requirements of the program and are scored competitively will receive extra points – as long as such applications represent projects located in communities that are in compliance with Executive Order 418. **For purposes of the two tax credit funding competitions to be held during 2004, communities either must have been certified as complying with Executive Order 418 or must have submitted all required certification documentation no later than the tax credit application deadline. If a community has neither been certified nor submitted its documentation by the deadline, the bonus points will not be made available to the tax credit application.** More information on the Executive Order is included in the section of this allocation plan entitled “The Competitive Scoring System”.

The Massachusetts State Housing Tax Credit

During 2001, the Department of Housing and Community Development made a valuable new resource -- the Massachusetts state housing credit -- available for the first time. During 2001 competitions, DHCD selected five worthy projects to receive the first state credit allocations. The Department's 2001 decisions on how to allocate the state credit were based in large part on input from the Massachusetts affordable housing community, including for-profit and non-profit developers, syndicators, attorneys, development consultants, other lenders, and housing advocacy organizations.

During 2004, the Department will allocate the available state housing credit by following the same process used in 2001. In accordance with the enabling statute and state tax credit regulations, the state housing credit can be awarded to projects that receive an allocation of federal tax credit or to tax exempt bond financed projects with respect to which the federal low income tax credit is allowable. Thus, the selection process for state credit projects fundamentally will be the same as the selection process for federal credit projects. On a voluntary basis, the sponsors of certain projects may request an allocation of state credit in combination with federal credit. **However, it is important to note that state credit typically will be allocated in lieu of a portion of federal credit, which the project might otherwise receive. The state credit typically will not be allocated in addition to the full allocation of federal credit for which a project is deemed eligible.**

At present, DHCD has the authority to allocate up to \$4 million per year in state credit for a five-year period that began in 2001. An eligible investor may claim each dollar of state credit allocated for a five-year period. Based on the current demand for state credit, DHCD expects to allocate the entire amount available in 2004 at the conclusion of the first 2004 funding round. In accordance with the

process set forth in Section XI below, DHCD may in 2004 issue binding forward commitments of 2005 state credit.

In selecting projects to receive federal/state credit allocations during the first 2004 funding round, DHCD will evaluate the capacity of the development team to process a blended federal/state project; the potential net equity raise to the project estimated by one or more syndicators; and the location of the project. Consistent with the enabling statute, DHCD intends to achieve a degree of geographic balance in the allocation of the new state credit.

Sponsors of projects seeking allocations of both state and federal credit should immediately contact the Department's Division of Private Housing (617-727-7824) to schedule time to discuss their plans. The state tax credit regulations are included in this document as Appendix D.

Section V. Special Challenges in 2004

Several years ago, the competition among Massachusetts projects seeking tax credits was not as intense as it is today. As the credit allocating agency during the early 1990's, the Executive Office of Communities and Development was able to award credit to virtually every project in the development pipeline that met threshold criteria.

During recent years, several factors have heightened the competition for credit, including changes in federal programs intended to support affordable housing. The federal government, through the U.S. Dept. of Housing & Urban Development (HUD), provides billions of dollars each year in support of affordable housing. Several HUD programs are having an impact on many affordable housing projects, particularly the HOPE VI projects. In recent federal budgets, Congress has authorized expenditures of significant federal resources to support the revitalization of deeply distressed federal public housing projects. Unfortunately, the federal funding available for the HOPE VI projects is often insufficient to complete the financing packages. In many states, including Massachusetts, the sponsors of HOPE VI projects seek other housing resources to fill the financing gaps. If they are unable to obtain other affordable housing resources, they may lose the millions of dollars in federal funds set aside specifically for their projects.

In Massachusetts during the past few years, several sponsors of HOPE VI projects and of large projects with expiring use restrictions applied for housing tax credits allocated by DHCD to complete their financing packages. The pressure on available credit from these projects is expected to continue during 2004. The sponsor of at least one Massachusetts HOPE VI project, the Maverick HOPE VI, is expected to seek a 9% credit allocation during 2004 and 2005 competitions

Actively trying to compete for credit with these large projects are numerous smaller community-based projects, often sponsored by local non-profits. Also trying to compete are numerous preservation projects with use restrictions expiring during the next few years and significant unmet capital needs.

In preparing the 2004 allocation plan, the Department has tried to fairly evaluate the needs of all these projects and their importance to the communities they will serve. Ideally, the Department would provide support to each type of project described in this section. For example, the HOPE VI projects bring millions of dollars in federal housing funds to Massachusetts and have the potential to greatly improve the distressed neighborhoods in which they are located as well as the lives of individual tenants. If the redevelopment of individual HOPE VI projects is successful, some very troubled neighborhoods will improve significantly. The Department fully recognizes the positive and dramatic changes to the Boston neighborhoods in which the completed Orchard Gardens and Mission Main HOPE VI units are located.

But the Department also wishes to support smaller-scale projects that result in the creation of new affordable housing units. These projects often are developed by non-profit sponsors whose organizations also are deeply invested in improving troubled neighborhoods. By acquiring and developing key properties -- properties that often are abandoned or seriously deteriorated -- the non-profit sponsors have a chance to make a real impact, block by block, on a neighborhood in distress.

These conflicting interests make the process of preparing the annual qualified allocation plan challenging for DHCD. In developing the 2004 plan, Department staff has focused, as always, on two basic questions:

- What kind of projects does DHCD most want to support?
- What is the fair division of tax credits among these projects?

In trying to answer these questions, the Department has considered the following:

- Where is the need for affordable rental units the greatest, as defined by rental rates, vacancy rates, public housing waiting lists, and other factors?
- What kind of impact will a tax credit project have on the surrounding neighborhood?
- Will the project demonstrate consistency with the Office for Commonwealth Development's Sustainable Development principles?
- What kind of unique and beneficial services will be available to the tenants of the completed project?
- What is the proper division of resources between family housing and housing intended to serve individuals, including the frail elderly?

The body of this 2004 Qualified Allocation Plan sets forth in detail the answers to the Department's basic questions and establishes the scoring system for 2004 tax credit applications. In brief, the answers to the two basic questions are as follows:

- 1) The Department wishes to support a reasonable mix of affordable housing projects, including small to medium-size projects that create new affordable units; preservation projects that maintain rents at affordable levels for low-income households; and HOPE VI redevelopment projects that have the potential to improve devastated neighborhoods.
- 2) During 2004, the Department intends to divide the available credit among these worthy projects such that:
 - 65% of the remaining credit is allocated to projects that create new units, either through rehabilitation or new construction, with an emphasis on small or medium-sized projects.
 - 35% of the remaining credit is allocated to large-scale projects with significant federal resources, such as expiring use restrictions projects, and other preservation projects.
- 3) Whether production or preservation, the ideal project should contain certain characteristics that make it worthy of tax credit consideration. These characteristics are described in later sections of the 2004 allocation plan. These characteristics are also described in Appendix F.

The key changes to the 2004 plan are described in the sections entitled "Threshold Criteria" and "Scoring System".

Section VI. Evaluation of the Need for Affordable Housing in Massachusetts

Each year, in deciding how to allocate the housing credit, the Department of Housing and Community Development must consider the need for affordable units throughout Massachusetts. The effort to evaluate need is complicated by the fact that there is no single Massachusetts housing market. Rather, there are hundreds of local housing markets, and they differ significantly from each other. The median home sales prices in the most affluent western suburbs of Boston exceed \$800,000, yet homebuyers in the more rural areas of the state can still find units priced below \$150,000.

Because of the disparate characteristics of various local housing markets, the best measures of affordable housing need in one market may not be the best measures in another. For example, some communities have relatively few residents with household incomes below 50% of area median income. But the average sales prices for homes in these communities may be above \$300,000, and there may be virtually no rental units available. So, while one indicator of need -- the number of poverty households -- may be low, another indicator -- average or median sales prices -- may be extremely high.

Despite the complexity of the task, the Department still must establish and evaluate certain measures of affordable housing need for purposes of allocating the credit available in 2004. While the indicators or measures of need are too numerous to list in full, the most basic measures of need in a given market area include many or all of the following:

- low median household income
- high percentage of low income households
- high percentage of households at extreme poverty level
- high percentage of renters in proportion to homeowners
- high percentage of households receiving welfare
- generally poor condition of the housing stock
- high rate of unemployment
- high rental rates in and near the market area
- high condominium and single family sales prices in and near the market area
- low vacancy rates
- long public housing waiting lists

Section 42 of the Internal Revenue Code provides some guidance to allocating agencies on which measures of need must be considered, but not to what degree. For example, Section 42 specifically requires the tax credit allocating agency to “give preference...among selected projects to projects serving the lowest income tenants”, and, in addition, to consider public housing waiting lists. But Section 42 does not mandate the relative importance an allocating agency must assign to either consideration.

In preparing recent allocation plan, the Department has attempted to evaluate the need for affordable rental units throughout the state and has reached the following conclusions. The Commonwealth's stock of subsidized housing increased from 150,841 units in late 1979 to 203,260 units by 1997. Most of the housing stock added during this period consisted of rental units. The total percentage of existing housing stock in the Commonwealth that is subsidized housing (i.e., housing that has at least one form of project-

based assistance) is roughly eight and one-half percent. This percentage includes both rental and homeownership units.

As of 1996, over 160,000 low income Massachusetts renter households (with incomes below 80% of median) were paying more than 50 percent of their income toward rent and utilities. Almost 95 percent of these households were very low income with incomes below 50% of the area median income. In addition, nearly 30,000 low income renter households were living in overcrowded conditions; the majority of these households included five or more persons.

Thus, despite the construction booms of the 1980s and the late 1990s and public efforts to support the development of affordable housing, there is still a substantial need for affordable rental housing in Massachusetts. After evaluating the available information, the Department has drawn the following basic conclusions regarding need:

- In most Massachusetts communities, there is a shortage of affordable rental units in good condition.
- There is still a greater need for family rental housing than for other types of affordable rental housing.
- In certain areas with low rental rates and sales prices, the housing stock is so deteriorated that it must either be rehabilitated or demolished and replaced by new units or rehabilitated.
- In other areas, the affordable housing stock includes affordable rental projects faced with expiring use restrictions. In some areas, these units will be lost as affordable housing unless there is intervention. Thus, a need for affordable housing may not exist today, but it may well exist in a year or two.
- In some communities in metropolitan Boston, rapidly escalating rental rates and median home sales prices have clearly eroded the supply of affordable housing. New affordable rental units are badly needed in these communities.

The Department's determination of need is reflected in the set-aside categories established for 2004 and described in detail in Section VII of this allocation plan. DHCD's determination of need also is reflected in the scoring system established for 2004 applications and described in Section X of this plan.

Section VII. Set-Aside Categories for 2004

After taking into consideration the particular challenges it faces in 2004 and after evaluating the need for affordable housing throughout the state, the Department has established three set-asides for purposes of allocating the credit in the year 2004: a set-aside for production projects; a set-aside for preservation projects; and a set-aside for the Maverick HOPE VI project in Boston. In detail, the three set-aside categories for the year 2004 are as follows:

- 1) **A set aside of calendar 2004 credit for the Maverick HOPE VI project**, pending submission of a fundable One-Stop Affordable Housing application, also approved by the U.S. Dept. of HUD and the Boston Housing Authority (BHA). In addition, the Department will issue binding forward commitments of calendar 2005 and calendar 2006 credit to Maverick. The aggregate amount of 9% credit to be allocated to Maverick in 2004, 2005, and 2006 will not exceed \$3.48 million. The Department has established this set-aside because of the unique characteristics of Maverick as of the date of this allocation plan. These characteristics include but are not limited to the following:
 - The need for the units: DHCD wishes to support rapid completion of all phases of the HOPE VI project, so that all 396 units are ready for occupancy by July 2006. The Department believes that rapid completion based on approved costs is in the best interests of the tenants and all the participating lenders.
 - The size of the project: No other pending tax credits application represents a project of the magnitude of Maverick. No other current project has the potential to create improvements as dramatic and widespread in a geographic area as large as Maverick.
 - The potential impact of the project: DHCD has closely watched the successful redevelopment of Boston's other HOPE VI projects, Orchard Park and Mission Main. As Orchard Park became Orchard Gardens, with HOPE VI funds as well as tax credit allocations from the Department, the positive impact on the Dudley Square neighborhood was quickly obvious. The redevelopment of Mission Main has had a similar impact on the Mission Hill/Lower Roxbury neighborhood.
 - The importance of the project to the City of Boston: The City of Boston has informed the Department that Maverick is one of its top priorities for tax credits funding during the next few years. While full support from a municipality is never an automatic guarantee of a tax credits allocation, it is important to the Department that a project has such support.
 - The services for tenants: The HOPE VI program provides funding for extensive support services for tenants of the completed projects. Services are intended to help tenants develop skills that either will help them become ready for work or help them compete for better jobs with higher wages. DHCD fully supports the provision of such services with federal HOPE VI funds and recognizes the uniqueness of projects that can offer such services to tenants.

In summary, for the following reasons, the Department has set aside calendar 2004 credit and will issue binding forward commitments of 2005 and 2006 credit not to exceed \$3.48 million:

- the degree of support from the city and the BHA;
- the level of resources already committed to Maverick by the U.S. Dept. of HUD;
- the magnitude and complexity of the project;
- the substantial momentum the project now has;
- the potential neighborhood impact;
- types of services that will be available to returning and new tenants of the project, to help them achieve greater personal success.

1) Production set-aside -- 65% of the available 2004 credit

The need and demand for affordable rental units is directly linked to the relative shortage of supply. Through this set-aside, the Department intends to allocate credit to support the production or creation of new affordable rental units. Applications for new construction projects will be evaluated in the production category. In addition, applications for rehabilitation will be evaluated in this category if:

- a) The units have been vacant for two or more years; or
- b) The units have been condemned or made uninhabitable through fire damage.

Sixty five percent of the credit available for allocation in 2004 is intended to support production. The minimum project size will be eight units. Applications for small or medium-sized projects -- projects with fewer than 50 units -- are strongly encouraged.

2) Preservation set-aside -- 35% of the available 2004 credit

Thousands of affordable housing units currently exist in privately owned properties and in federally funded public housing projects. Applications for preservation projects will be considered in this category only if:

- The units are located in expiring use restriction projects. An “expiring use restriction project” is defined as a project whose owner is able to prepay an FHA-insured or MHFA- financed loan within nine months of the date of the tax credit application to DHCD. In addition, the project cannot be subject to any other use restriction that would effectively limit the owner’s ability to convert the development to non-affordable use. When the use restrictions expire, low- or moderate-income tenants in some locations may face steep rent increases they cannot afford. While not all units in expiring use restriction projects can or should be preserved as affordable housing, many units are too valuable to lose. The replacement cost would far outweigh the cost to the state of helping to preserve the existing stock.
- In some cases, valuable Section 8 project-based units are located in projects whose owners have the legal right to terminate the Section 8 contracts, or to “opt-out” of the contracts. An “opt-out” project is defined as a project whose owner is able to prepay and opt-out of a Section 8 project-based contract within nine months of the date of the tax credit application to DHCD. In addition, the project cannot be subject to any other use restriction that would effectively limit the owner’s ability to convert the development to non-affordable use. When an owner “opts-out” in a strong housing market, he or she may elect to raise the rents significantly, including the rents paid by low-

or moderate-income tenants. Thus, the “opt-out” projects represent affordable stock that potentially could be lost from the inventory.

- The units are located in distressed or foreclosed properties and are at risk of being lost as affordable housing without an infusion of new capital and/or a new ownership structure. Such “distressed and “at risk” properties will be based on a capital needs study commissioned by DHCD or a public agency or lender (e.g. MHFA, MHP) that indicates that at least \$10,000 per unit of new capital is needed to address immediate repair and replacement needs.

During 1999, the Department worked closely with William Breitbart of MBL Housing in Springfield -- an expert on preservation projects and issues -- and with other industry leaders perceived as experts on preservation. Mr. Breitbart prepared a detailed memorandum on the Massachusetts preservation projects faced with expiring use restrictions and/or Section 8 opt-out provisions during the next few years. With input from the public lenders as well as many other professionals specializing in affordable housing, Mr. Breitbart also prepared a series of recommendations for the Department on ways to “triage” the preservation projects seeking DHCD’s valuable, but necessarily limited, resources.

In keeping with the preservation recommendations, the Department intends to allocate its most valuable resources, such as tax credits and HOME, to the projects most at risk from expiring use restrictions and/or Section 8 opt-out. As an example, assume that two projects both qualify as preservation projects and meet the Department’s allocation thresholds and fundamental scoring criteria. One project is at risk from expiring use restrictions, but the owner is willing to sell to a purchaser who will maintain long-term affordability in part through an allocation of 9% credit. The other project is occupied but has rehabilitation needs; the owner seeks tax credits to make necessary capital improvements. For purposes of allocating the 9% credit during 2004, the Department will give priority to the project at risk from expiring use restrictions -- if the project meets threshold and fundamental scoring criteria. If sufficient credit is available, the other project might receive an allocation as well, but it is not a priority project within the preservation set-aside.

Through the preservation set-aside, the Department intends to support projects with expiring use restrictions, HOPE VI projects, and other preservation projects. The minimum project size is eight units, although the Department expects that most or all applications in this category will represent fairly large-scale projects. There is no maximum project size in this category. However, certain cost limits, eligible basis limits, and DHCD allocation and subsidy limits will apply to virtually all 2002 projects and will effectively restrict total project size. Limits on cost, basis, and allocation amounts are described in a later section of this allocation plan. DHCD subsidy limits are described in the section of this plan entitled “Scoring System”.

Federal law requires that at least 10% of the credit available in 2004 be allocated to projects involving “qualified non-profit organizations”. DHCD will meet the 10% requirement by allocating credit to such organizations through either or both of the set-aside categories described in this section.

To be considered a “qualified non-profit”, an organization must:

- Be described in Section 501(c)(3) or (4) of the Internal Revenue Code and be exempt from payment of taxes under Section 501(a);
- Have as one of its exempt purposes the fostering of low income housing; and
- Not have a prohibited affiliation with, or be controlled by, a for-profit organization, as determined by DHCD.

DHCD will include in the tax credit application the necessary certification to substantiate qualified non-profit status. DHCD will make the required determination after reviewing the certification.

In order to count toward the 10% set-aside, a qualified non-profit organization, in accordance with Section 42 of the Internal Revenue Code, must:

- Own an interest in the project, directly or through a partnership; and
- Must materially participate (on a regular, continuous, and substantial basis within the meaning of Section 469(h) of the Internal Revenue Code) in the development and operation of the project throughout the tax credit compliance period.

In addition, qualified non-profit developers -- with or without material participation -- may have a right of first refusal to acquire a tax credit project after year 15, in accordance with Section 42 of the code.

It is likely that some applications will be submitted for projects that include both production and preservation units, as described in this plan. If the majority of the units in a project qualify for the production set-aside, DHCD will evaluate the project in the production category. Conversely, if the majority of the units qualify for the preservation set-aside, DHCD will evaluate the project in the preservation category.

The percentages of available credit established for each set-aside in 2004 are program goals, rather than absolute minimums or maximums. In evaluating all projects and determining the most effective use of the available credit, DHCD, in its sole discretion, may choose to modify the percentages established as goals for each set-aside.

Regardless of whether an application is submitted as production or preservation, it must represent a project worthy of consideration by numerous housing and development standards. While no project is ever ideal, the Department is intent on allocating its extremely valuable resource, the 9% credit, only to the strongest possible applications. The following statements describe some of the characteristics the Department seeks to encourage and reward through the scoring system, regardless of project type:

- The project will fill a genuine, documented need, readily supported by available market information.
- The completed project will have a positive impact on the surrounding neighborhood.
- The completed project will have characteristics consistent with sustainable development principles.
- From an architectural perspective, the project will be compatible with the surrounding neighborhood.
- The units, including the affordable units, will be well-designed, desirable places to live.
- The completed project will include units reserved for individuals or families earning less than 30% of area median income

- Local elected officials and neighbors actively support the project.
- The development team has the financial strength to carry out the project.
- The development team has an excellent record in affordable housing development and management.
- Whether new construction or rehabilitation, the intended scope of work is appropriate.
- The total development cost of the project is reasonable, both in the context of industry standards and in the context of public perception.
- The developer's fee and overhead are consistent with the Department's written standards.
- Specific categories of project costs are reasonable, including estimated hard costs, estimated soft costs, and projected operating costs.
- The amount of public subsidy to be invested in the project is reasonable.
- No member of the development team will profit unduly from participating in the project.
- The project meets a recognizable public purpose.

Section VIII. Recommended Cost Limits; Caps on Eligible Basis; Cap on Allocations Per Project

The Massachusetts economy and real estate market conditions have changed substantially -- and for the better -- since recommended cost limits for tax credit projects were included in the 1992 Qualified Allocation Plan. During 1998, the Department decided to evaluate the cost limits and modify them, as necessary, to better reflect current market conditions. An established real estate consulting firm, Byrne McKinney Associates of Boston, worked with agency staff and numerous housing professionals throughout 1998 to evaluate the existing tax credit portfolio and the reasonable costs associated with the development of tax credit projects in Massachusetts. At the conclusion of the evaluation, Byrne McKinney prepared a report for the Department recommending higher cost limits for all categories of tax credit projects. For purposes of allocating the credit during 1999, DHCD increased the recommended cost limits for tax credit projects in accordance with the table below. The recommended cost limits are replacement costs, defined as total development costs net of project reserves and syndication costs. The recommended cost limits established in the 1999 allocation plan are the recommended cost limits in this allocation plan with the exception of higher cost limits for large projects within the Boston metro area under the production set-aside.

The increases in some categories are less than the increases recommended in the Byrne McKinney study -- copies of which are available from the tax credit staff at DHCD. At this time, the Department feels that additional evaluation of the various factors contributing to cost is necessary before the recommended cost limits are raised further. Raising the cost limits to permit higher cost projects would result in even greater pressure on a limited resource. In addition, it is clear that neither the media nor the public adequately understands the issue of cost as it relates to the development of complicated affordable housing projects in expensive real estate markets. For purposes of the 2004 tax credit competitions, the recommended cost limits are as follows:

SROs outside the Boston metro area	\$ 75,000
SROs within the Boston metro area	95,000
Enhanced SROs outside the Boston metro area	90,000
Enhanced SROs within the Boston metro area	110,000
Assisted living units projects outside the Boston metro area	100,000
Assisted living units projects within the Boston metro area	140,000
Small unit projects outside the Boston metro area	100,000
Small unit projects within the Boston metro area	125,000
Large unit projects outside the Boston metro area	125,000
Large unit projects within the Boston metro area- preservation set-aside	150,000
Large unit projects within the Boston metro area- production set-aside	155,000

Large unit projects must have an average of at least two bedrooms per unit or consist of at least 75% two or more bedroom units and 25% three or more bedroom units.

Enhanced SRO projects must contain kitchen and bathroom facilities in at least two-thirds of the units.

As indicated, these limits are ***recommended*** limits: they are not intended to be absolute limits for projects seeking

tax credits. Applications for projects with costs higher than the recommended limits will undergo greater scrutiny, so that DHCD may attempt to understand the added costs. In these cases, applicants will have to justify the project costs to DHCD in order to be eligible for 2004 consideration.

Additional limitations for competitively allocated credits: Even if an application is accepted for review with costs higher than the recommended limits, DHCD will typically cap the project's eligible basis at \$150,000 (or \$155,000 for projects in the production set-aside). Thus, in determining the amount of tax credits for which a project is eligible, DHCD will typically base the calculation on a maximum eligible basis of \$150,000 (or \$155,000 for production set-aside). For example, in evaluating a preservation project with 30 tax credit units, the Department would calculate the credit allowance as follows: \$150,000 in maximum basis times 30 tax credit units times 9%, or \$405,000 in allowable annual credit. In evaluating a production project with 30 tax credit units, the Department would calculate the credit allowance as follows: \$155,000 in maximum basis times 30 tax credit units times 9%, or \$418,500 in allowable annual credit.

Finally, in order to ensure equitable distribution of limited tax credit resources, the Department has established limits to the tax credit amounts that certain types of projects may be awarded. In a change from prior allocation plans, the Department has established \$500,000 as the maximum amount that can be awarded to a new assisted living project – i.e., a project not previously submitted for tax credit consideration. The Department has established one million dollars as the maximum allocation amount that can be awarded to any other project – defined as a “single project” -- during the term of this allocation plan. The term “single project” shall apply to separate phases of one project. Requests for allocations in excess of one million will be considered if there is insufficient alternative demand for the credit.

Section IX. Threshold Criteria for 2004 Tax Credit Applications

During 2004, DHCD will first evaluate all tax credit applications in accordance with threshold criteria, then in accordance with competitive scoring criteria totaling 182 points. Unless an application meets all the threshold criteria set forth in this section, the Department will not review the application in the competitive scoring categories. **In addition, each applicant must submit a narrative addressing the project's ability to satisfy the threshold requirements.**

The eleven threshold criteria that all applications must meet are as follows:

- Threshold #1: Conformance with Set-Aside Categories
- Threshold #2: Quality of Site
- Threshold #3: Evidence of Local Support or Local Processing
- Threshold #4: Creditworthiness of Sponsor/Owner
- Threshold #5: Evidence of Site Control
- Threshold #6: Identification of All Financing Sources
- Threshold #7: Status of Compliance Monitoring of Other Tax Credit Projects
- Threshold #8: Good Standing with Respect to Other DHCD Programs
- Threshold #9: Commitment to a Thirty-Year Term of Affordability
- Threshold #10: Tenant Supportive Services
- Threshold #11: Inclusion of units for Very Low Income Persons or Families

The requirements included in each threshold criterion are as follows:

Threshold #1: Conformance with Set-Aside Categories

Each project submitted for 2004 consideration must meet the criteria for either the production or the preservation set-aside. The production set-aside, described in detail in an earlier section of this plan, includes a minimum project size of eight units. At least 75% of the units in a proposed production project must have two or more bedrooms. DHCD will permit exceptions on the number of bedrooms only if efficiency or one-bedroom units are appropriate for the intended residents. (For example, assisted living projects primarily will include efficiency or one-bedroom units and will not be subject to the two-bedroom requirement. An exception to the bedrooms requirement also will be made for single room occupancy projects.) Regardless of the exceptions described in this paragraph, the Department's priority in this set-aside is the production of rental units suitable for families.

The preservation set-aside also is described in detail in an earlier section of this plan. The minimum project size in this category is eight units. There is no maximum project size in this category. However, projects over 100 units will undergo greater scrutiny than projects of 100 units or less. The Department has a preference for projects that include units suitable for families, but recognizes that some preservation projects consist primarily of one-bedroom units for rental by older households. Other preservation projects are predominantly single room occupancy units for rental by individuals with special needs.

Threshold #2: Quality of Site

The quality of the site is one of the most fundamental aspects of any housing project. Like other lenders, both public and private, the Department ideally wishes to fund only those projects in outstanding locations, on problem-free sites. However, in reality, many tax credit applications represent existing, occupied residential properties

located on sites that are acceptable, but not ideal. Additional applications represent abandoned or distressed properties that previously were occupied by tenants or homeowners. The sites of these properties also may be less than ideal.

The Department anticipates that a number of 2004 applications will represent occupied or previously occupied HUD properties. If DHCD were making the decision on quality of site, it might not agree with the decision already made by the U.S. Dept. of HUD. Since a whole class of applications include sites that have been accepted by the federal housing agency, DHCD has elected not to evaluate “site” as a competitive category in 2004.

However, every 2004 application submitted for consideration still must include a site acceptable, by Department standards, for the proposed housing use. Sponsors should review their project in light of the Sustainable Development principles outlined in Section 1 of this QAP. Appendix F includes a checklist of project characteristics that may be helpful in assessing a project’s consistency with the principles. Before preparing a One-Stop Affordable Housing Application, each tax credit sponsor should contact the Division of Housing Development to schedule a site review. The Department will presume that a site is acceptable if it currently is the location of an occupied housing project, with no significant change proposed to the tenant group to be served. However, Housing Development staff will still conduct an on-site assessment using among other factors, the Sustainable Development principles. To schedule a site review, the tax credit sponsor should contact the Department at least one month prior to the competition deadline for submitting applications. With less than one month’s notice, the Department may not be able to conduct a site evaluation prior to the competition deadline.

Sites proposed for new construction projects of 100 units or more must pass an additional test. The chief elected official of the municipality in which the site is located must sign a letter of support, indicating that the site and the proposed use are acceptable. No applications for new construction projects of 100 units or more will be deemed to meet threshold unless they include such a letter. After obtaining a letter from the chief elected official, the tax credit sponsor should contact DHCD to schedule a site visit. Thus, the site of proposed new construction projects of 100 units or more must meet Department standards and must have the written approval of the chief elected official of the municipality.

Threshold #3: Evidence of Local Support or Local Processing

In an ideal world, every affordable housing project would have the support of two key constituencies: its neighbors and the elected leaders of the community. Unfortunately, many projects lack local support, whether from the owners of abutting properties, local elected officials, or both. In some cases, support is withheld for good reason; in other cases, support is unreasonably withheld. In general, DHCD encourages applications from tax credit projects that have full local support. Projects with the support of the chief elected official will be rewarded in the competitive scoring criteria.

However, with two exceptions, sponsors may submit applications for DHCD’s credit authority for projects that are not locally supported. If a sponsor/owner cannot demonstrate local support, he or she must instead demonstrate through a written narrative accompanying the One-Stop application substantial efforts to respond to local concerns and obtain the chief elected official’s support. If DHCD is not satisfied that the sponsor/owner has made every reasonable effort to obtain support, the Department will reject the tax credit application.

As indicated, there are two exceptions to the category of projects that can seek tax credits from the Department in the absence of local support. Two kinds of project must have the written support of the chief elected official of the community in which the housing will be located in order to be eligible to receive an award of credit through DHCD:

- 1) New construction projects of 100 units or more
- 2) HOPE VI projects

DHCD will accept applications for its credit authority for new construction projects of 100 units or more and HOPE VI projects only with the chief elected official's written support.

With respect to local contributions, numerous projects submitted for tax credit consideration are located in municipalities that have their own funds through federal sources (i.e. Community Development Block Grant monies, the HOME Program, etc.), or through other sources. For projects located within such municipalities, the Director of DHCD reserves the right to require a local contribution of funds in order for the project to receive tax credit consideration.

Threshold #4: Creditworthiness of Sponsor/Owner

The Department will accept tax credit applications from sponsoring entities that are creditworthy by DHCD standards. The standards of creditworthiness include the following:

- 1) The debt obligations of a partner or other principal of the sponsor/developer entity and the proposed mortgagor/owner entity are paid current;
- 2) No liens exist against property owned by the partner or other principal;
- 3) The partner or other principal of the sponsor/developer entity and the proposed mortgagor/owner entity has not failed to respond to a public filing such as a lien or a judgment;
- 4) The sponsor/developer entity and the proposed mortgagor/owner entity (including any affiliates) have not experienced any event(s) of foreclosure over the past five years.
- 5) The sponsor/developer entity and the proposed mortgagor entity (including any affiliates) have not declared bankruptcy.

In general, a corporation will not be considered creditworthy if there are tax liens against the corporation, its affiliates, its subsidiaries, or its properties. In addition, if there is a bankruptcy lien against the corporation, it will not be considered creditworthy. DHCD also will determine whether a corporate sponsor is current in payments to its creditors and will require a certificate that all state tax payments are current. The Department will require that a sponsor certify that all of the standards of creditworthiness listed above have been adequately satisfied as part of the One-Stop application submission package.

DHCD is considering entering into a Memorandum of Understanding (MOU) with the Internal Revenue Service in

order to obtain tax information useful in determining an applicant's creditworthiness and good

standing with the agency. If an MOU is executed during 2004, DHCD reserves the right to require that all tax credit applicants complete Form 8821, Tax Information Authorization (Rev. 9-98), naming DHCD as the appointee to receive tax information.

Threshold #5: Evidence of Site Control

The project sponsor must be able to demonstrate full control of all land and buildings included in the project through a fully executed agreement such as an option agreement, a purchase or sale agreement, or another similar instrument. The instrument demonstrating site control must include a sales price and an expiration date. The expiration date of the instrument should extend at least eight weeks beyond the tax credit application deadline. Ownership of a note and assignment of a mortgage when combined with other factors may constitute full site control in certain limited circumstances.

Section X E. (Readiness to Proceed) below discusses the Code requirement for incurring costs which meet the so-called ten percent test. Property acquisition often serves as a substantial portion of these costs. If a development receives a tax credit allocation and later cannot meet the ten percent test, DHCD risks losing the credits. In order to avoid this potential outcome, DHCD attempts to ascertain that sponsors have full site control of all properties included in their respective projects.

The Department will consider all pertinent circumstances in determining whether the site control threshold has been satisfied.

Threshold #6: Identification of All Financing Sources

In the One-Stop Affordable Housing application, the sponsor of each tax credit project must identify funding sources sufficient to cover all development and operating costs. The sponsor may not be able to submit firm financing commitments for all sources by the application submission deadline. However, at minimum, the sponsor must submit documentation demonstrating a strong interest from each financing source. Sponsors of assisted living projects are expected to submit very strong letters from financing sources.

Threshold #7: Status of Compliance Monitoring of Other Tax Credit Projects

Many development team members submitting projects for 2004 consideration previously have participated in the development of tax credit projects that now are occupied. These projects may already have been monitored to determine compliance with Section 42 of the Internal Revenue Code. DHCD will not accept 2004 applications for tax credits if the proposed development team includes members who are affiliated with existing projects for which Forms 8823 ("Low income Housing Credit Agencies Report of Noncompliance") have been issued for material and/or continuing, but curable, non-compliance. In addition, DHCD may not accept applications from developers of tax credit projects financed in previous years with outstanding compliance monitoring fees due to the agency.

These restrictions apply to all members of the development team. (Ownership and management of a project constitute an affiliation.) Before submitting a 2004 application, a sponsor/owner must verify that all team members can meet this threshold requirement.

Threshold #8: Good Standing with Respect to Other DHCD Programs

Many development team members submitting 2004 tax credit applications have participated in other

DHCD-assisted projects. All key members of a development team seeking 2004 tax credits must be in good standing with DHCD with respect to other DHCD-assisted projects. As one example, many tax credit developers have used state HOME assistance. If a developer -- or other key team member -- participated in a state-assisted HOME project that has been monitored and determined to be out of compliance, DHCD will not accept a 2004 tax credit application from a team that includes this team member.

As another example, if a key team member has not made satisfactory progress on an earlier DHCD-assisted project, the Department may not accept a 2004 tax credit application that includes this team member. Developers of tax credit projects financed by DHCD in previous years will not be considered in good standing with the agency unless compliance monitoring and/or tax credit processing fees have been paid in full for all their existing projects. Before submitting a 2004 tax credit application, the sponsor/owner must determine that the following members of the team are in good standing with DHCD: consultant; architect; contractor; management agent; attorney. Obviously, the sponsor/owner also must be in good standing with DHCD.

Threshold #9: Commitment to a Thirty-Year Term of Affordability

The sponsor/owner of each 2004 application must commit to at least a thirty-year term of affordability. With respect to affordability, the sponsor/owner must commit:

- To maintain the tax credit project as low income rental housing for at least 30 years; and
- To offer to the state an opportunity to present a “qualified contract”, as such term is defined in Section 42 of the Internal Revenue Code, for the purchase of the project after expiration of the term of the Agreement.

Each tax credit project owner will be required to sign a Tax Credit Regulatory Agreement and Declaration of Restrictive Covenants (“the Agreement”) before receiving the IRS Form(s) 8609. In the Agreement, the owner will be required to submit to DHCD a written request one year before expiration of the term of the Agreement (i.e., applicable term of affordability) for DHCD to procure such a qualified contract.

Threshold #10: Tenant Supportive Services

Sponsors of some tax credit projects, including assisted living projects and HOPE VI projects, provide extensive supportive services for their tenants. The cost of services at assisted living properties and HOPE VI projects is part of the total development cost of the projects. At other tax credit projects, developers -- especially non-profit developers -- work with neighborhood groups, churches, local schools, and local employers to attempt to create opportunities for their tenants. The services ultimately available at these projects are not part of total development cost but may prove highly beneficial to both tenants and owners over time. In the 2004 Qualified Allocation Plan, DHCD is requiring each applicant for 9% credit to provide a narrative with the One-Stop funding application describing services available in the community to the existing or future tenants of the project. Developers do not necessarily have to pay for the services,

but must identify the services and indicate how they will notify tenants, on a regular basis, of opportunities for education and employment training, and other important services.

Threshold #11: Inclusion of Units for Very Low Income Persons or Families

DHCD requires sponsors of 2004 tax credit applications to reserve ten percent of the total number of units in their projects for persons or families earning less than 30% of area median income. During 2004, DHCD will exempt only one type of project from this threshold. If a tax credit sponsor is seeking a comprehensive permit, is in conformance with Chapter 40B requirements, and is in the comprehensive permit hearing process prior to July 1, 2003, the sponsor does not need to add the units required by this threshold. However, it is DHCD's expectation that all tax credit sponsors will be in full conformance with this threshold by the end of 2004.

Each applicant must submit a narrative addressing the project's ability to satisfy all threshold requirements.

Section X. The Competitive Scoring System

During 2004, DHCD will evaluate all tax credit applications first in accordance with threshold criteria, then in accordance with competitive criteria, totaling 168 points. Applications for projects that meet all applicable threshold criteria will be scored in two competitive categories totaling 168 points. The two competitive categories are:

I) Fundamental Project Characteristics -- 100 points

II) Special Project Characteristics -- 68 points

The threshold criteria are set forth in the preceding section of this plan. The components of the two competitive categories are as follows:

Fundamental Project Characteristics

A total of 100 points is available in this category, which includes the five fundamental components of any affordable housing project, regardless of type. The five fundamental components, valued equally at 20 points each, are:

A. Design

B. Development Team

C. Marketability

D. Financial Feasibility

E. Readiness to Proceed

Each of the five components of “Fundamental Project Characteristics” is described in detail below and on the following pages. Every tax credit application must score at least 12 points in each of the five components of fundamental project characteristics. If an application scores fewer than 12 points in any of the five categories, it will not receive an allocation of tax credits during 2004. If an application scores at least 12 points in each of the five categories, totaling at least 60 points, it will be evaluated and scored in the second competitive category, “Special Project Characteristics”.

If a project is evaluated favorably and receives a 2004 allocation of credit, the sponsor should note that later modifications to the project may result in a re-evaluation by the Department. If a project is modified substantially, the allocation may be withdrawn. DHCD reserves the right to suspend further review of a project once it has identified that the project has failed in any one of the categories included in “fundamental project characteristics.”

A. Design -- 20 points total; 12 point minimum required score

The design elements and the proposed scope of work for each 2004 tax credit project will be reviewed by

architects and/or cost estimators under contract to DHCD. The architects and/or cost estimators will evaluate the architectural aspects of each project to determine:

- Whether the project conforms with applicable laws, regulations, code requirements;
- Whether the architectural treatment is appropriate, given community standards and the surrounding neighborhood, as well as the project site;
- Whether proposed amenities are sufficient, appropriate for the target population, but not excessive;
- Whether the site layout and design adequately address environmental issues; parking needs; outdoor improvements appropriate for the target population, etc.;
- Whether the owner/developer has incorporated energy conservation measures and whether the project complies with EPA's ENERGY STAR standards, in addition to those required by code, which will result in cost efficiencies.

Project designs that use energy efficient technologies, recycled and/or non-/low-toxic materials, exceed energy codes and otherwise result in waste reduction and conservation of resources are preferred.

In general, DHCD will follow the HOME Rental Program Guidelines and Regulations with respect to minimum unit and room sizes, minimum suggested counter space, etc., for tax credit projects. With respect to the rehabilitation of existing structures, these minimum standards are intended for guidance and should be met whenever possible. The Department recognizes that, in some cases, constraints such as existing partitions, walls, plumbing, or excessive construction costs will prevent compliance with these standards. If a sponsor determines that it is not feasible to comply with all the HOME standards, he or she should provide an explanation in the tax credit application.

As was the case during 2003, DHCD will require during 2004 that each sponsor include in their application a construction cost proforma prepared by a qualified contractor or architect or a qualified construction cost consultant. DHCD also will require that all sponsors of existing projects submit a letter from the primary lender supporting the construction cost proforma and the proposed scope of work and confirming that such costs cannot be funded in part through a mortgage increase. **In addition, in accordance with industry recommended practices, sponsors of projects applying for funding under the preservation set-aside must submit a capital needs assessment that adequately supports the scope of proposed improvements to the Department's satisfaction. A qualified, licensed architect or engineer must perform this study.**

In cases where the developer and the general contractor are affiliated, a third party construction a qualified unrelated third party contractor or architect must prepare cost proforma or qualified construction cost consultant. Related party contractors are subject to the maximum allowable builder's profit and overhead and general requirements indicated in the Program Guidelines as well.

B. Development Team -- 20 points total; 12 point minimum required score

The key members of the development team are the owner/developer; the consultant; the architect; the contractor; the management agent; and the attorney. DHCD will review the background of the key team members to determine:

- Prior successful experience in developing tax credit projects
- Financial strength
- Physical and financial condition of other properties developed by the sponsor/owner
- Prior experience on other DHCD-assisted projects
- Inclusion of SOMWBA-certified Minority/Women's Business Enterprise members on the team as sponsor/owner; management agent; contractor.
- Inclusion of SOMWBA-certified Minority/Women's Business Enterprise members on the team as architect; attorneys; syndicators; accountants; consultants.

The intent of this scoring category is to identify those teams capable of financing and developing complicated tax credit projects and managing the projects successfully after completion and occupancy. The scoring in this category will reflect whether members of the team currently own or manage troubled properties. The scoring also will reflect whether members of the team recently have been involved with other DHCD-assisted projects that have not progressed to DHCD's satisfaction. In addition, the scoring will reflect whether the team includes members who are M/WBE certified in Massachusetts by the State Office of Minority and Women Business Assistance (SOMWBA).

To determine the application score in this category, the Department will evaluate the capacity of each key member of the team as identified in the One-Stop. Sponsors of tax credit projects should note that they have two options with respect to identifying a general contractor:

- 1) A sole contractor can be listed in the One-Stop, and the Department will evaluate the capacity of that contractor as part of the scoring process; or
- 2) 20 The names of three possible general contractors can be listed in the One-Stop, and the Department will evaluate all three entities for scoring purposes. If the sponsor chooses this option, the score for the contractor will be the average of the scores for each of the three entities listed.

Whether the sponsor chooses to make the final selection of a contractor before or after submitting the tax credit application, certain subcontract bidding processes must be followed to the Department's satisfaction. If a general contractor is selected before the project is submitted, the sponsor will have to demonstrate at a later time that subcontractors were selected through an appropriate bidding process. This requirement will be a condition in the tax credit reservation letter. If the sponsor elects to choose a contractor after receiving a tax credit reservation, he or she must select the lowest qualified bidder from a pool of at least three bidders and must document the selection process to the Department's satisfaction. Again, this requirement will be a condition in the tax credit reservation letter.

Regardless of which approach the sponsor selects, the Department will require a submission describing bidding procedures later in the tax credit process.

In order to ensure that management entities have adequate experience in managing tax credit properties, DHCD reserves the right to require tax credit compliance training as a condition of its funding award.

C. Marketability-- 20 points total; 12 points required minimum

Unless a market exists for the proposed project, the project will fail. **The sponsor/owner identified in each 2004 tax credit application must include in the One-Stop Affordable Housing Application a detailed market study prepared by a qualified professional acceptable to DHCD.** If, during the course of its review, DHCD determines that the market study submitted with the application is inadequate, DHCD will require the sponsor/owner to submit a new market study. An application that includes a market study that does not confirm the viability of the proposed project will in all likelihood not score the minimum points required in this category. The market study included in the application should address need and demand in the specific housing market, including typical sales prices, rental rates for various types of projects, vacancy rates. The market study should include the sponsor/owner's analysis of why the proposed project will be competitive.

As part of the determination of marketability, DHCD will conduct an independent evaluation of housing need. This evaluation will investigate the project's marketability including whether the project is located:

- a) In a community in which the public housing waiting list exceeds, by a ratio of three to one, the total number of existing federal and state public housing units available for the proposed population (not including units occupied by federal or state rental assistance certificate holders); or
- b) In a community in which there is no public family housing; or
- c) In a community where the rent burden is greater than 30%. Rent burden is defined as the median percentage of gross income spent on housing in the community in which the proposed project is located.

Sponsors of projects for populations with special needs (including assisted living facilities) should carefully address the anticipated demand for the proposed project and the reasons why the project will be attractive to the particular consumer group(s). Sponsors of these projects must include a resident social services plan acceptable to DHCD. DHCD will place great emphasis on the market study for assisted living applications.

DHCD also will review the proposed project's rent structure. In general, the proposed rents will be compared to rents for comparable, unassisted units in the subject market. DHCD also may consider such market factors as home sales, rentals, and average vacancy levels. Additional factors to be evaluated include, but are not limited to, the sponsor's comparables submitted with the One-Stop application and/or market study information, newspaper ads, etc. In determining the feasibility of the projected rents, DHCD will use Section 8 contract rents only if satisfactory evidence of a housing assistance payments contract is included with the One-Stop application. If an executed payments contract is not included, DHCD will compare the proposed rents to the lower of the current HUD FMR for the area or to comparable market rents for the area.

DHCD also will evaluate the sponsor/owner's marketing and outreach plan. All sponsor/owners should include a detailed plan with their respective applications.

D. Financial Feasibility -- 20 points total; 12 points required minimum

The information contained in the One-Stop Affordable Housing Application must demonstrate to DHCD's satisfaction that the proposed project is financially feasible during construction and after completion. The

sponsor/owner must include in the application solid evidence of financing commitments from construction and permanent lenders. If possible, the sponsor/owner should include a letter of interest from a syndicator. Assisted living applications must include a letter from a syndicator. The sponsor/owner must identify sufficient financing, sources for all project uses in the One-Stop application. The operating proformas included in the application must include trending assumptions and debt service coverage acceptable by current industry standards and explicitly acceptable to DHCD.

The amount of equity raised per tax credit dollar is determined by market forces and, therefore, is subject to change from time to time. For 2004 underwriting purposes, DHCD will assume that each project will obtain \$.75 per tax credit dollar available for development costs. In order for DHCD to accept a raise higher than \$.75 for underwriting purposes, the sponsor/owner must provide evidence of a firm commitment from a syndicator acceptable to the Department. In determining the financial feasibility of the proposal, DHCD will consider the adequacy of the developer's fee and overhead to cover any gap that would result if an equity raise greater than \$.75 per tax credit dollar is not achieved.

Sponsor/Owners are encouraged to refer to the Program Guidelines for the Low Income Housing Tax Credit Program dated January 2004 for further details regarding recommended financing. A sponsor/owner using assumptions that deviate from the DHCD-recommended assumptions must justify such deviations to DHCD's satisfaction.

E. Readiness to Proceed -- 20 points total; 12 points required minimum

The sponsor/owner of each tax credit application must demonstrate to DHCD's satisfaction the ability to meet the Internal Revenue Code ten percent test and to receive a carryover allocation in timely fashion. For projects receiving a reservation of tax credits in the first half of the calendar year 2004, the sponsor/owner must incur costs, no later than the close of calendar year 2004, which are more than ten percent of the project's reasonably expected basis. In keeping with recent amendments to the Internal Revenue Code, a sponsor/owner receiving a reservation of tax credits in the second half of the calendar year 2004 will have an additional six months from the date of the 2004 carryover allocation or binding commitment (or until June 30, 2004) to meet the ten percent test.

The One-Stop application should include evidence of progress in areas including but not limited to land use and zoning approvals, environmental and historic reviews, ability to close on sources of financing, and so on. **Sponsor/Owners must include with the One-Stop a narrative that addresses the proposed costs to be incurred in meeting the ten percent test as well as an anticipated timeframe for meeting the test.** For properties located in historic districts or designated as buildings having historical significance, the sponsor/owner must include in the narrative the status of required historical approvals.

During 2004, DHCD will give special consideration in this scoring category to projects that were submitted during a previous competition but not selected for funding, if DHCD determines that the project sponsors have addressed all issues that prevented them from receiving an earlier allocation.

Special Project Characteristics

The Department has designed this scoring category to encourage and reward projects that include some of the characteristics DHCD would most like to support in affordable housing projects. The points in this category are available to projects that include the following special characteristics:

- Consistency with the Commonwealth's ten Sustainable Development principles (please refer to pages 3-4 in Section I. and Appendix F.)
- Official local support
- Part of a comprehensive neighborhood planning effort
- Non-profit sponsorship
- Inclusion of MBE/WBE members on the development team
- Low soft costs and developer's fee
- Special needs groups as intended consumers
- Inclusion of market rate units in the project
- Location in a community with less than 10% subsidized stock
- Conformance with Section 42 Code preferences

The Department values all of these project characteristics. The maximum points available per category are described on the following pages

Consistency with the Commonwealth's Sustainable Development principles – 14 Points Maximum:

DHCD will award up to 14 points in this category for projects that demonstrate consistency with the ten Sustainable Development principles described in Section I. Project sponsors should submit a narrative response identifying the principles met by the project and identifying the tangible characteristics of the project that demonstrate such achievement.

Official Local Support -- 6 Points Maximum:

DHCD will award up to six points to any application with a letter of support from the chief elected official of the community to benefit from the tax credit project. The letter must specifically endorse the proposed project. The number of points awarded in this category will depend, in part, on whether the chief elected official commits local resources to the project.

Inclusion in a Comprehensive Neighborhood Revitalization Effort -- 6 Points Maximum:

Some proposals for tax credit projects are part of neighborhood plans prepared and endorsed by municipal officials. DHCD will award up to six points for 2004 applications that include some or all of the following features:

- Evidence that the proposed project is part of a formal neighborhood plan approved by the chief elected official of the municipality. The formal plan must be a written plan with the neighborhood delineated; target properties identified; proposed demolition, rehabilitation, and new construction identified; etc.
- The plan also must include reliable information on local housing need, including current

characteristics of the neighborhood's housing stock; supply and demand for affordable rental and ownership units within the neighborhood, etc.

- Evidence that the proposed project is located in a qualified census tract.
- If the funding application seeks tax credits for a project with expiring use restrictions, the neighborhood plan must address the importance of the project, the need for preservation of the units, and the other housing options available to residents if the preservation effort is not successful.

Low Soft Costs and Developer's Fee -- 6 Points Maximum:

Tax credit sponsors also may earn three points if they propose projects with soft costs -- exclusive of developer's fee and overhead, and consultants' fees -- representing less than 15% of the project total replacement cost carried on the One-Stop Affordable Housing application. If an application receives three points in this category, DHCD will not recognize future increases in the project soft costs.

An additional three points will be awarded to applications that include a combined developer's fee and overhead and consultants' fees totaling less than 10% of the project's total replacement cost carried on the One-Stop application. If an application receives three points in this category, DHCD will not recognize a future increase in the developer's fee and/or overhead, and/or consultants' fees.

It is important to note that points in this category will be awarded only if the project proformas conform to industry standards and DHCD standards for the affordable housing type proposed. For example, an application may include soft costs constituting less than 15% of the project's total replacement cost. However, all other costs identified in the One-Stop must be reasonable -- neither too high nor too low. The minimum debt service coverage must be acceptable to DHCD. The rent levels, trending assumptions, and per-unit operating costs also must be acceptable as outlined in the current Low Income Housing Tax Credit Program Guidelines. For instance, a sponsor could submit an application for a small-unit project in the Boston metropolitan area with soft costs below 15% of replacement cost, debt service coverage at 1.05, and per-unit operating costs below \$2,500. DHCD would not award points in this category to a project with these characteristics.

MBE/WBE Membership on the Development Team -- 6 Points Maximum:

If the project sponsor, general contractor, or management agent is certified by the State Office of Minority and Women Business Assistance (SOMWBA) as a Minority Business Enterprise (MBE) organization or a Women's Business Enterprise (WBE), DHCD will award six points in this category. If another key member of the development team -- the architect; the developer's consultant; the attorney; the accountant, the syndicator -- is SOMWBA-certified as MBE or WBE, DHCD will award a maximum of three points in this category. (It is important to note that six points will be awarded only if the sponsor, contractor, or management agent is MBE or WBE certified by SOMWBA.) No points will be awarded for development team members who are certified in trades not to be used at the proposed project nor will points be given for any subcontractors who are not under contract with the owner. All SOMWBA certifications must be current in order for the application to receive points.

Non-profit Sponsorship -- 6 Points Maximum:

Section 42 of the Internal Revenue Code requires that each allocating agency award at least 10% of the annual credit available to projects sponsored by non-profit organizations. In addition to meeting the

Section 42 requirements, DHCD wants to encourage non-profit sponsorship of tax credit applications. These applications often represent community-based projects that have strong local support and are critical to the

redevelopment of troubled neighborhoods. DHCD will award six points in this category to any tax credit application sponsored by a non-profit organization that meets the qualifications in Section VII.

Special Needs Groups as Intended Consumers -- 6 Points Maximum:

DHCD will award six points in this category to projects intended to primarily serve individuals or households with special needs. This category includes but is not limited to the frail elderly to be served in assisted living projects; tenants with developmental disabilities; formerly homeless households making the transition to permanent housing; individuals with children; and so on. However, the points will be available only if the project design, amenity package, and services package are appropriate, in DHCD's estimation, for the intended residents. For example, if the sponsor of an assisted living project does not include adequate common space or services in the tax credit application, no points will be awarded in this category. Projects designed to serve the elderly but not intended as assisted living developments will not be eligible for points in this category. DHCD will award three points in this category to projects that intend to reserve at least half the total units for populations with special needs.

Inclusion of Market Rate Units in the Project -- 6 Points Maximum:

The Department will award six points to a tax credit application that includes at least 50% market rental units. Three points will be awarded to a project with at least 25% market rental units. DHCD will award points in this category only if the marketing information presented by the sponsor and confirmed by the Department supports the proposed mix of market and affordable units.

Location in a Community with Less than 10% Subsidized Stock -- 6 Points Maximum:

DHCD will award six points to any large family housing project located in a municipality which has less than 10% subsidized housing. DHCD will make this determination based on a municipality's percentage of low and moderate income housing as identified in DHCD's most recent subsidized housing inventory.

Conformance with Section 42 Code Preferences -- 6 Points Maximum:

In this category, the **total** number of points available to any project is six.

Extended Term of Affordability

DHCD will award six points in this category to applications whose sponsors commit to an affordability term in perpetuity. Three points will be awarded to applications whose sponsors commit to a 50-year term of affordability. The extended terms of affordability will be included in the project's regulatory agreement. If a project receives points in this category, DHCD will not permit the term of affordability to be reduced at a later date.

Lowest Income Population to be Served

DHCD will award six points in this category to projects whose sponsors commit to renting at least 10% of the tax credit eligible units to individuals or families with incomes at or below 30% of median income. If a project receives points in this category, DHCD will require the sponsor's commitment to be included in the project's regulatory agreement. Units intended to count towards this set-aside must be clearly identified in the application in order for the project to earn points in this category.

Projects Located in Qualified Census Tracts

DHCD will award six points in this category to a project located in a qualified census tract, the development of which contributes to a concerted community revitalization plan. Internal Revenue Code section 42 (d)(5)(C)(ii) defines "Qualified Census Tract" as any census tract designated by the Secretary

of HUD in which 50 percent or more of the households have an income less than 60 percent of area median gross income or, in certain instances, there is a poverty rate of at least 25 percent.

Executive Order 418 – 14 Bonus Points

Executive Order 418, “Assisting Communities in Addressing the Housing Shortage”, requires all communities to take steps to create housing for individuals and families across a broad range of incomes. In keeping with the intent of Executive Order 418, DHCD will award 14 bonus points to tax credit applications for projects located in communities that have been certified by DHCD as meeting the current requirements of Executive Order 418. Information on Executive Order 418 and the Implementation Guidelines for Executive Order 418, including the certification process, is available on DHCD’s website at <http://www.mass.gov/dhcd> or by contacting DHCD’s Low Income Housing Tax Credit office at (617) 727-7824.

Section XI. The Application Process for 2004 Credit

During 2004, the Department of Housing and Community Development will hold two funding rounds for available tax credits and other DHCD resources in support of affordable rental housing. As of the date of this plan, the approximate amount of federal tax credits available for allocation during 2004 is \$3.5 million.

First Funding Round:

The deadline for submitting applications for the first funding round will be Wednesday, February 25, 2004. All applications must be submitted on the computerized One-Stop Affordable Housing Application. Sponsors are required to submit two floppy disks, two copies of architectural materials, four application hard copies, and the application fee no later than the close of business on Wednesday, February 25, 2004 to:

MA Department of Housing & Community Development
Division Housing Development
100 Cambridge Street, Suite 300
Boston, MA 02114

Applicants should refer to the most recent Notice of Funding Availability for further instruction regarding the number of application copies required for proposals seeking multiple funding resources.

Applications received after the close of business on Wednesday, February 25, 2004 will not be reviewed. Prospective applicants are strongly encouraged to meet with DHCD tax credit staff to discuss their particular projects prior to the funding round deadline.

In addition to the submissions to DHCD, each tax credit sponsor must provide a full copy of the One-Stop application to the chief elected official of the municipality in which the project is located. By Wednesday, March 17, 2004, the sponsor must submit to DHCD a certification that a One-Stop application identical to the submission to DHCD has been delivered to the chief elected official. If at any time during the competition DHCD determines that the sponsor failed to fully comply with this requirement, the Department will disqualify the sponsor's application.

The Department anticipates announcing the results of the first funding competition in May 2004. The Department reserves the right to allocate the entire credit amount available during the first funding round.

It is possible that a first round application will meet the competitive scoring threshold but will not receive an allocation of credit, due to the allocation of all available 2004 credit to higher scoring projects. If this happens, the project sponsor may request that DHCD re-evaluate the project during the second funding round. The sponsor will not be required to submit a new One-Stop nor an additional application fee unless the project changes. However, the sponsor may elect to submit a modified application for the project and pay the new application fee.

Second Funding Round:

Although DHCD may allocate the full amount of 2004 credit available during the first funding round, the Department will hold a second funding round during the year 2004 for tax credits and other agency

resources in support of rental housing. The deadline for submitting applications to the second funding round will be the close of business on Friday, September 10, 2004. The application requirements for the second round,

including the submission to the chief elected official, will be the same as for the first round. Applications received after the close of business on Friday, September 10, 2004 will not be reviewed. Sponsors must submit the certification of One-Stop delivery to the chief elected official by Friday, October 1, 2004.

The Department anticipates announcing the results of the second funding competition during December 2004. If no 2004 credit remains at that time, the Department may issue binding forward commitments of 2004 credit. In general, this amount shall not exceed \$2.5 million. The commitments will be made in sequential order to the highest-ranking applications submitted during the second funding round. The Department intends to treat the September round as the first round for awarding a significant amount of calendar 2004 credit.

Anticipated Schedule for 2005 Funding Rounds:

A number of affordable housing developers and experts have urged the Department to establish a longer-range pipeline for tax credit projects. The tax credit program arguably is the most complex of the affordable housing production programs. Developers reasonably contend that the development process can take longer than anyone would wish, and that an earlier commitment from the state to a strong tax credit project is in everyone's best interests. At this time, the Department intends to schedule two funding rounds during 2005 for tax credits and other resources in support of affordable rental housing. The Department anticipates that first round submissions will be due during February 2005, with decisions to be announced in May 2005. The exact deadline will be published by the Department in future notices. DHCD also anticipates holding a second round in August or September 2005, with the deadline to be announced in future Department notices. If all available 2005 credit is allocated during the first round, DHCD may decide to issue binding forward commitments of a portion of 2006 credit during the second round.

Application Completeness:

Although most development projects change over time, and some projects change substantially, the Department must evaluate all project applications in a fair and equitable way. The One-Stop application essentially is a "snapshot" of a project on the day of submission. For purposes of threshold review and competitive evaluation, the Department will not accept the submission of additional documentation after the application deadline. Each project will be reviewed based on the materials contained in the One-Stop on the deadline for all submissions.

During 2004, DHCD will make an exception to this policy for projects that receive favorable financing commitments during funding competitions conducted by other public-purpose lenders. For example, the Federal Home Loan Bank Board -- an important source of funds for many affordable housing projects -- is expected to announce the results of its first 2004 competition in spring or summer 2004. If the DHCD competition is still underway at that time, DHCD will permit sponsors of projects that receive Federal Home Loan Bank Board commitments to notify the Department that they have received awards. DHCD will consider the new commitments in its review process during the first 2004 tax credit competition. In addition, in its sole discretion, the Department may contact tax credit applicants after the application deadline to seek clarification on certain materials contained in the One-Stop application.

Section XII. Processing Fees; Late Fees; Compliance Monitoring Fees

A. Processing Fees:

Sponsors seeking tax credits during 2004 will be required to pay processing fees as follows. Assuming that the sponsor/owner meets Department deadlines for submitting carryover documentation, the total processing fee will be either 8.5% or 4.5%. For tax credit projects sponsored by for-profit developers, the total processing fee is equal to 8.5% of the annual credit amount. For projects sponsored by non-profit developers, the total processing fee is equal to 4.5% of the annual credit amount. The credit amount will be the amount identified on the carryover allocation. If the project does not need a carryover allocation, the credit amount will be the amount identified on IRS Form 8609.

The processing fee for each project submitted during 2004 will be due in three installments:

- at the time of application;
- at the time the project receives a carryover allocation;
- at the time of final commitment of the credit.

It is important to note that the Department will charge a late fee to all sponsors of projects who fail to submit the required documentation and processing fee installments by their deadlines as described below.

First Installment at Application:

All tax credits sponsors must pay either \$1,000 or \$5,000 at the time of application. Checks must be made payable to the Department of Housing and Community Development. The application fee is non-refundable. The application fee for non-profit sponsors and for sponsors of projects with 20 or fewer units is \$1,000. All other sponsors must pay \$5,000.

Second Installment at Carryover:

Sponsors must pay the second installment of the processing fee before receiving a carryover allocation from DHCD. The amount due in this installment will be one-third of the total processing fee, less the amount of the first installment paid at the time of application. This second payment also is non-refundable.

Third Installment at Allocation:

Each sponsor must pay the remainder of the total amount of the processing fee before receiving a final allocation of credit and IRS form 8609 from DHCD. The third installment also is non-refundable.

B. Late Fees:

Given the time-sensitive and critical nature of year-end Internal Revenue Code requirements, DHCD reserves the right to charge late fees to any and all sponsors failing to meet the deadlines for submitting required documentation and processing fee payments. **The Department will assess a \$3,000 penalty to any non-profit sponsor and a \$5,000 penalty to any for-profit sponsor who fails to remit the required documentation and the second or third installments of the processing fee within the time**

specified by the agency. In either case, the carryover allocation and/or IRS Form 8609(s) will not be released to the sponsor until any outstanding processing fees and late fees have been paid.

Late submission of a signed regulatory agreement to the Department is also subject to a late fee. A finalized regulatory agreement, suitable for execution by the Department, must be submitted by December 1st of the year in which the sponsor first expects to take credit. **A fee assessed for late submission of a regulatory agreement - \$3,000 to a non-profit sponsor, \$5,000 to a for-profit sponsor - will be in addition to any late fee detailed above.**

In addition, any sponsor who fails to meet his or her carryover allocation deadline--thus endangering a portion of the Commonwealth's valuable tax credit resource--should note that the Department has the right to withdraw the tax credit commitment to the particular project. Furthermore, the Department reserves the right to reject future applications for tax credits from those parties who have failed to meet the Department's deadlines for year-end submissions. The Department is prepared to exercise these rights if necessary.

C. Compliance Monitoring Fees:

An annual monitoring fee will be due and payable by all projects (allocation years 1987-2004) to DHCD or its authorized delegate during the term of the compliance period (as defined in Internal Revenue Code Section 42) or required to be placed in an escrow by the owner. The fee will be based on a charge of \$30 per low income unit per year, as adjusted periodically by DHCD by the Consumer Price Index (CPI). If the actual compliance period for a project will begin in a year later than 2004, the monitoring fee will be required beginning in that same year. Projects which received an allocation of tax credits in years prior to 2004 will be required to pay only a tax credit monitoring fee as set forth below, notwithstanding any provision to the contrary in any prior year's Qualified Allocation Plan and/or Program Guidelines, including without limitation provisions for an annual administrative or monitoring fee. DHCD will utilize 1997, the first year that it collected compliance monitoring fees, as its base year in determining all subsequent fee adjustments.

The actual annual fee will be calculated and collected according to one of the two following methods, the selection of which will be at DHCD's sole discretion:

- The annual monitoring fee will be due and payable on a date designated annually by DHCD throughout the term (or remaining term) of the compliance period. Under this method, the fee will be calculated at \$30 per low income unit in 2004, which amount may be adjusted by DHCD periodically by the Consumer Price Index (CPI) for subsequent years. The total annual fee will not exceed the amount of \$4,000 per project in 2004, which amount may be adjusted by DHCD periodically by the Consumer Price Index (CPI) for subsequent years;
- The total amount of monitoring fees for the 15-year compliance period (or remaining years of the compliance period beginning with 2004) will be due and payable in one payment at a date designated by DHCD. DHCD may require projects that have not previously received IRS Form 8609 to make payment prior to the release of Form 8609. Under this method, the fee will be calculated at \$30 per low income unit multiplied by

15 or the number of remaining years in the compliance period, whichever number is less.

- **The total fee will not exceed the amount of \$4,000 per project** multiplied by 15 or the number of remaining years in the compliance period, whichever number is less. At DHCD's discretion, this total amount will be placed in escrow by DHCD or the Owner and will be used for the purpose of monitoring during the compliance period. If DHCD does not institute this method of collection in 2004, **DHCD may adjust the \$30 per low income unit and \$4,000 per project amounts by the Consumer Price Index (CPI) in any subsequent year.**

DHCD reserves the right to charge a reasonable monitoring fee to perform compliance monitoring functions after the completion of the tax credit compliance period (as defined in Internal Revenue Code Section 42) for the remainder of the term of the Tax Credit Regulatory Agreement and Declaration of Restrictive Covenant.

Section XIII. Modification of the Allocation Plan

DHCD will administer the allocation of tax credits in such a manner as it deems appropriate in accordance with federal law and procedure. It will make determinations, publish rules and guidelines, and require use of particular forms as necessary.

The Governor delegates to DHCD the power to amend this plan in response to changes in federal law or regulations. In addition, the Governor recognizes that circumstances not foreseen in the Plan may arise, and therefore delegates to DHCD the authority to resolve conflicts, inconsistencies, and ambiguities in the plan and operation of the program; to respond to any abuse of the allocation system; and, if necessary, to amend the plan after a public hearing. (Please refer also to Appendix B.)

During 2004, the Department will continue to examine its use of the Sustainable Development principles in evaluating projects that request assistance. Future Qualified Allocation Plans, or amendments to the 2004 Plan, may have more explicit requirements for projects seeking tax credit allocations in order to assure their consistency with the principles. The Department intends to work closely with the development community and will seek their input in determining appropriate criteria.

Section XIV. Program Policies

Sponsors of 2004 tax credit projects should take into consideration the program policies described in this section. Additional program policies are described in the Low Income Housing Tax Credit Guidelines available from DHCD. All applicants should read the guidelines in effect at the time of application.

A. Assumptions Regarding Value of the Credit and Least Amount Necessary for Feasibility

Federal legislation requires that the administering agency allocate only the amount of credit necessary to make a project feasible. To determine the least amount of credit necessary for feasibility, DHCD must be aware of the full extent of financial resources available to a project and the project costs. In particular, federal law requires developers to certify to state credit agencies the extent of all federal, state, and local resources that apply or might apply to a project, as well as project costs at three different points in time:

- 1) At the time of application,
- 2) At the time an allocation is made, and
- 3) When the project is placed in service.

To determine the least amount of credit necessary for feasibility at the time of application and at the time of allocation, DHCD will assume that a project is to be syndicated and will determine a credit amount based on a set of assumptions regarding projected net equity to be raised. Developed by DHCD, these assumptions will be applied to all tax credit projects unless the developer provides definitive information, acceptable to DHCD, indicating that different assumptions should be used.

When a project places in service, DHCD requires an audited cost certification in its established format. The IRS Form 8609(s) will not be released to the project owner until the final analysis is completed by DHCD. DHCD may reduce the final allocation as it appears on the 8609(s) for the project if:

- The project does not have enough basis to support the original allocation; or
- The project costs are not acceptable to DHCD.

DHCD will examine all costs for reasonableness, including but not limited to the following: acquisition; construction costs; general development costs; syndication costs; builder's profit, overhead, and general requirements; and operating costs. Only reserves required by a lender and/or DHCD will be allowed. If a developer has proceeded with or completed construction of a project without DHCD's knowledge, DHCD may deem tax credits unnecessary for the feasibility of that project. In these circumstances, the project will not be eligible for an award of tax credits. DHCD will not allow a development budget line item carried both as a source and a use, if it has no reasonable basis for being paid but is included for the purpose of calculating the eligible basis in an effort to increase the annual tax credit calculation.

B. Developer's Fee and Overhead

DHCD will determine the calculation of each tax credit allocation based on eligible costs that include a developer's fee and overhead that conform to DHCD's maximum allowable developer's fee and overhead limits as calculated below. **Please note that the calculation of fees was changed in the 2000 QAP and those changes are reflected in this document.** DHCD will determine the developer's fee and overhead at three points in time: at the time of application, at the time of carryover allocation, and when the project sponsor applies for IRS form 8609. If the developer's fee and overhead exceed the allowable limits at any of the three points in time, the tax credits allocation will be reduced accordingly. Although DHCD recognizes the evolving nature of projects, in order to promote readiness and to encourage the best possible cost estimates, DHCD reserves the right to disallow increases in total developer's fee and overhead that result primarily from increases in replacement costs after the time of application. For purposes of calculating the developer's fee and overhead, total replacement costs are defined as all total development costs net of project reserves and syndication costs approved by DHCD.

In calculating the allowable developer's fee and overhead, sponsors should consider any development or operating reserves or escrows funded by cash at closing or through syndication as part of the developer's fee and overhead, as follows:

- Reserves or escrows that are intended to remain in the project for more than five years will not be included in the developer's fee and overhead. The five year holding period is assumed to begin on the first day that the development has achieved full occupancy, and end five years following such date;
- 80% of reserves or escrows that are intended to remain in the project for less than five years are included in the developer's fee and overhead;
- Development consultant costs are included in the developer's fee and overhead allowed.

The maximum allowable developer's fee and overhead shall be calculated according to the following schedule (see the exception below):

- Developer's fee and overhead may equal up to 5% of project acquisition cost, and, in addition;
- Developer's fee and overhead may equal up to 15% of the first \$3 million in total replacement costs less acquisition, and, in addition;
- Developer's fee and overhead may equal up to 12.5% of the total replacement costs less acquisitions that are from \$3 million to \$5 million, and, in addition;
- Developer's fee and overhead may equal up to 10% of the total replacement costs less acquisition that is over \$5 million.

If the developer's fee and/or overhead for a project is determined to be unreasonable, the Director of

DHCD reserves the right to reduce the permissible fee, even though that fee may otherwise meet program guidelines based on the project's size. As previously noted, DHCD intends to re-evaluate its maximum allowable

developer's fee and overhead limits as part of its overall review of program costs. The Department will make any proposed changes available to the public for review and discussion once its review has been completed. Once any changes to the current limits have been approved, the Department will hold a public hearing and modify the allocation plan accordingly to incorporate the new limits.

C. Compliance Monitoring

Beginning with 1990 allocations, the federal legislation requires that an extended low income use agreement be in effect for a minimum of 30 years for every project receiving tax credits. To enforce these and other program use restrictions, DHCD will require that each project owner enter into a Tax Credit Regulatory Agreement and Declaration of Restrictive Covenants ("the Agreement"). In the case of buildings of which at least 50% of the aggregate basis (including land and the building) is financed with the proceeds of tax-exempt bonds, DHCD will require that the owner enter into an Extended Low Income Housing Agreement and Declaration of Restrictive Covenants ("the Agreement") with the Massachusetts Housing Finance Agency (MHFA) or the Massachusetts Development Finance Agency (MDFA). These Agreements limit the use of all of the low income units to rental housing, with income and rental restrictions, for a minimum period of thirty years.

In addition, DHCD has an obligation, as of January 1, 1992, to monitor the compliance of all tax credit projects with tax credit requirements as set forth in Section 42 of the Internal Revenue Code and applicable regulations. DHCD will monitor tax credit projects for compliance with the requirements of the Agreement. DHCD also will perform physical inspections taking into consideration local health, safety and building codes. Owners may be charged an annual fee to cover the administrative costs of such monitoring.

DHCD's procedure for monitoring compliance with Low Income Housing Tax Credits requirements is outlined in Appendix A to this plan. DHCD's procedure is adopted pursuant to Section 42(m)(1)(B) of the Internal Revenue Code and Treasury Regulation Section 1.42-5. DHCD reserves the right to amend this procedure as may be necessary or appropriate to conform to applicable changes in the Internal Revenue Code or regulations promulgated there under. Notwithstanding anything to the contrary in this Allocation Plan, DHCD may adopt such amendments without a public hearing process, but shall give reasonable notice before implementation of any such amendment to all tax credit applicants and owners. In addition, DHCD may adopt further monitoring forms and procedures as part of its Low Income Housing Tax Credit Guidelines or as otherwise deemed appropriate.

Pursuant to Section 42(m)(1)(B) and Treasury Regulation Section 1.42-5(f), DHCD may retain an agent or other private contractor ("Authorized Delegate") to perform compliance monitoring functions. Any reference to DHCD in this monitoring procedure shall also include, where appropriate, an Authorized Delegate of DHCD.

Pursuant to Section 42 (m)(1)(B)(iii), **this monitoring procedure applies to all owners of buildings or projects for which the low income housing credit is or has been claimed at any time.** If DHCD becomes aware of noncompliance that occurred prior to January 1, 1992, DHCD is required to notify the Internal Revenue Service of such noncompliance. The monitoring procedure includes provisions for

record keeping and record retention, annual certification and review, on-site records review, building inspection, and notification to owners and the Internal Revenue Service of noncompliance.

D. 130% Rule

Projects located in qualified census tracts or difficult-to-develop areas as identified by the U.S. Department of Housing and Urban Development may seek up to 130% of the rehabilitation credit basis amount for which they

are eligible. The 130% factor may not be applied to the acquisition basis. DHCD will award up to 130% of the rehabilitation credit at its discretion and only if necessary for project feasibility. Current information about the designation of qualified census tracts and difficult development areas was issued by HUD on June 30, 1999, and September 22, 2000, respectively. At the time that this QAP was drafted, revised 2004 designations had not yet been published by HUD. The definition of qualified census tract has also been changed in the new federal legislation.

Tax-exempt projects are eligible for up to 130% of credit, subject to the determination of least amount of credit necessary for feasibility.

E. Lead Paint

All units in all tax credit buildings must be de-leaded prior to the issuance of a final allocation (IRS Form(s) 8609) for the project. All de-leading work must be performed in accordance with the provisions of M.G.L. c.111, 190-199B, 105 CMR 460.000.

F. Handicapped Accessibility

Tax credit projects must be in compliance with all applicable federal and state statutes and regulations with regard to the operation of adaptable and accessible housing for the handicapped. Sponsors should note the requirements of the Architectural Access Board (AAB) that the public areas and at least five percent of the units must be made accessible in projects containing 20 or more units.

G. Affirmative Action

DHCD requires developers to establish affirmative action goals for the percent of minority participation in each project. Developers and management agents must establish effective marketing plans to reach the identified minority groups. Prior to initial occupancy of any unit in the project, the owner shall adopt and implement 1) an affirmative fair marketing plan for all units and 2) a tenant selection plan for the low income units, in both cases consistent with any standards and guidelines adopted by DHCD as then in effect and consistent with all applicable laws. Both the affirmative fair marketing and tenant selection plans shall be subject to review by DHCD, at DHCD's request.

If a tax credit project is located in a predominantly white neighborhood in the City of Boston, according to a list maintained at DHCD, the affirmative fair marketing plan shall have the percentage goals for occupancy of the low income units which reflect the racial composition of the City of Boston as determined in the most recent U.S. Census. As of the date of the issuance of this allocation plan, these percentages are as follows:

59.0%	White
23.8%	Black
10.8%	Hispanic
.3%	Native American
5.2%	Asian/Pacific Island
1.0%	Other

H. HUD Subsidy Layering Guidelines

Pursuant to Section 911 of the Housing and Community Development Act of 1992, HUD is required to determine that projects receiving or expecting to receive both federal, state or local assistance and tax credits do not obtain subsidies in excess of that which is necessary to produce affordable housing. On December 15, 1994, the U.S.

Dept. of HUD issued administrative guidelines referred to as subsidy layering guidelines, regarding limitations on combining Low Income Housing Tax Credits with HUD and other government assistance in the Federal Register. The guidelines make a provision for housing credit agencies to implement the subsidy layering reviews for projects that are at least receiving HUD housing assistance and are receiving or allocated Low Income Housing Tax Credits. Housing credit agencies may perform the subsidy layering review function provided that the housing credit agency certifies to HUD that it will properly apply the guidelines that HUD establishes. DHCD is the housing credit agency in Massachusetts. However, at the time of issuance of this allocation plan, DHCD has not made the certification to HUD to assume these responsibilities. Applicants should call the Low Income Housing Tax Credit Program office for updated information and/or a copy of the guidelines. If DHCD does not assume these responsibilities, subsidy layering will be performed by HUD in accordance with its guidelines.

I. Project Size

In order to avoid undue concentration of resources in any one area, DHCD will consider tax credit projects of 100 units or more on a case-by-case basis. DHCD will evaluate community support to substantiate the need for a project of such size. DHCD will require a very detailed market study and will closely examine the probable absorption rate for these projects.

J. Single Room Occupancy

Federal law requires that a Low Income Housing Tax Credits unit may not be used on a transient basis. Tax regulations require a minimum lease term of six months. However, single room occupancy units rented on a month-to-month basis may qualify for the credit if they are funded under the Stewart B. McKinney Act.

K. Housing for the Homeless

The tax credit has become a substantial resource for transitional housing for the homeless. The portion of a building used to provide supportive services may be included in the qualified basis. Transitional housing for the homeless must contain sleeping accommodations and kitchen and bathroom facilities and be located in a building used exclusively to facilitate the transition of homeless individuals to independent living within 24 months.

L. Luxury Items In Tax Credit Projects

In accordance with federal tax law, the eligible basis of a building must be reduced by the amount of the adjusted basis attributable to those market units in the building that are above average quality standard of the low income units. However, the developer may elect to exclude from the eligible basis the excess cost of the market units, provided that such excess cost does not exceed 15% of the cost of a low income unit.

APPENDICES

Appendix A: Compliance Monitoring Procedure

The compliance monitoring procedure includes five components:

1. Record keeping and Records Retention
2. Annual Certification and Review
3. Records Review
4. Building Inspection
5. Notification of Noncompliance

These components are based on and incorporate the requirements of Internal Revenue Code section 42 and Treasury Regulation section 1.42-5. “Low income units” refers to tax credit eligible units as defined by Section 42(g).

I. Record keeping And Record Retention

Record keeping: For each year in the compliance period, which is equal to 15 taxable years beginning the first year the tax credit is taken, the Owner shall maintain records for each building in the project showing the:

- a. Total number of residential rental units in the building (including the number of bedrooms and the size in square feet of each residential rental unit);
- b. Percentage of residential rental units in the building that are low income units as defined by Section 42(g), and the size in square feet of each low income unit.
- c. Rent charged on each residential rental unit in the building (including any utility allowance);
- d. Number of occupants in each low income unit if the rent is determined by the number of occupants per unit under Section 42(g)(2) (as in effect prior to 1989 amendments);
- e. Annual income certification for each low income tenant per unit;
- f. Documentation to support each low income tenant’s income certification (for example, a copy of the tenant’s federal income tax returns, W-2 Form, verification from a third party such as an employer or a state agency paying unemployment compensation, and/or a statement from the local housing authority declaring that the tenant did not exceed the income limit under Section 42(g) if a tenant is receiving Section 8 housing assistance payments,);
- g. Each low income vacancy in the building and information that shows when, and to whom, the next available units were rented;

- h. Eligible basis and qualified basis of the building at the end of the first year of the credit period; and
- i. Character and use of the nonresidential portion of the building included in the building's eligible basis under Section 42(d).

Specific Requirements: In accordance with Treasury Regulation Section 1.42-5 and Revenue Procedures 94-64 and 94-65, DHCD adopts the following specific requirements: (i) As provided in Section 5.01(3) of Revenue Procedure 94-64, the requirement for annual income re-certification will apply to all owners, including all owners of 100% low income buildings. DHCD will not provide an owner with a written statement as required in Section 5.01(2) of Revenue Procedure 94-64. (ii) As provided in Section 4.04 of Revenue Procedure 94-65, DHCD will require owners to obtain documentation, other than the statement described in Section 4.02 of the Revenue Procedure, to support a low income tenant's annual certification of income from assets.

Records Retention: The Owner shall retain records for the first year of the credit period for at least six years beyond the due date (with extensions) for filing the tax return for the last year of the compliance period of the building. The Owner shall retain the records described above for all subsequent years in the compliance period for at least six years after the due date (with extensions) for filing the federal income tax return for that year.

Additionally, for each year that the Agreement remains in effect after the compliance period, the Owner shall retain records adequate to demonstrate compliance with the terms and conditions of the Agreement, including, but not necessarily limited to, income and rent records pertaining to tenants. The Owner shall retain the records pertaining to a particular year for at least 6 years following the close of that year.

Inspection Records Retention: The Owner shall also retain and provide, for DHCD's inspection, any original report or notice issued by a State or local authority of a health, safety, or building code violation concerning the Project. Retention of the original violation report or notice is not required beyond the time when DHCD reviews the report or notice and completes its inspection pursuant to Section III below, except where the violation remains uncorrected.

II. Annual Certification And Review

Submission of Certification: The Owner of every project that has received tax credits must submit to DHCD at least annually for each year in the compliance period an Owner's Certification of Continuing Tax Credit Compliance, which will be provided by DHCD. In this document, the Owner shall certify to DHCD, under the penalty of perjury, that for the preceding 12-month period:

- a. The project was continually in compliance with the terms and conditions of its Agreement with DHCD, MHFA or MDFA;
- b. The project met either the 20-50 test under Section 42(g)(1)(A) or the 40-60 test under Section 42(g)(1)(B), whichever minimum set-aside test was applicable to the project (The 20-50 test means that a minimum of 20% of the project's units were set aside for tenants at 50% of the

area median income at tax credit restricted rent levels. The 40-60 test means that a minimum of 40% of the project's units were set aside for tenants at 60% of the area median income at tax credit restricted rent levels);

- c. There was no change in the applicable fraction as defined by Section 42(c)(1)(B) of any building in the project, or that there was a change, and a description of that change is provided;
- d. The Owner has received an annual income certification from each low income tenant, and documentation to support that certification; or in the case of a tenant receiving Section 8 housing assistance payments, that the Owner has received a statement from a public housing authority that the tenant's income does not exceed the applicable income limit under Section 42(g). In accordance with Treasury Regulation Section 1.42-5 and Revenue Procedures 94-64 and 94-65, DHCD adopts the following specific requirements: (i) As provided in Section 5.01(3) of Revenue Procedure 94-64, the requirement for annual income re-certification will apply to all owners, including all owners of 100% low income buildings. DHCD will not provide an owner with a written statement required in Section 5.01(2) of Revenue Procedure 94-64. (ii) As provided in Section 4.04 of Revenue Procedure 94-65, DHCD will require owners to obtain documentation, other than the statement described in Section 4.02 of the Revenue Procedure, to support a low income tenant's annual certification of income from assets;
- e. Each low income unit in the project was rent-restricted under Section 42(g)(2);
- f. All units in the project were for use by the general public (as defined in Treas. Reg. 1.42-9), including the requirement that no finding of discrimination under the Fair Housing Act, 42 U.S.C. 3601-3619, occurred for the project. (A finding of discrimination includes an adverse final decision by the Secretary of the Department of Housing and Urban Development (HUD), 24 CFR 180.680, an adverse final decision by a substantially equivalent state or local fair housing agency, 42 U.S.C. 3616a(a)(1), or an adverse judgment from a federal court.);
- g. The buildings and Low Income units in the project were suitable for occupancy, taking into account local health, safety, and building codes (or other habitability standards), and the State or local government office responsible for making local health, safety, or building code inspections did not issue a violation report or notice for any building or Low Income unit in the project. Alternatively, if a violation report or notice was issued by a State or local government office, the owner must state whether the violation has been corrected and must also attach to the Owner's Certification either a statement summarizing the violation report or notice or a copy of the violation report or notice;
- h. There was no change in the eligible basis (as defined in Section 42(d)) of any building in the project, or there was a change, and information regarding the nature of that change is provided;
- i. All tenant facilities included in the eligible basis under Section 42(d) of any building in the project were provided on a comparable basis without charge to all tenants in the building;
- j. If a low income unit in the project became vacant during the year, reasonable attempts were made to rent that unit or the next available unit of comparable or smaller size to tenants having a qualifying income before any units in the project were or will be rented to tenants not having a qualifying income;

- k. If the income of tenants of a low income unit in the building increased above the limit allowed in Section 42(g)(2)(D)(ii), the next available unit of comparable or smaller size in the building was or will be rented to tenants having a qualifying income;
- l. An extended Low Income housing commitment as described in Section 42(h)(6) was in effect (for buildings subject to section 7108(c)(1) of the Omnibus Budget Reconciliation Act of 1989), including the requirement under Section 42(h)(6)(B)(iv) that an owner cannot refuse to lease a unit in the project to an applicant because the applicant holds a voucher or certificate of eligibility under section 8 of the United State Housing Act of 1937;
- m. All Low Income units in the project were used on a nontransient basis (except for transitional housing for the homeless provided under Section 42(i)(3)(iii) or single room occupancy units rented on a month-by-month basis under Section 42(i)(3)(B)iv); and
- n. Any additional information that DHCD deems pertinent.

In addition, the Owner must submit completed IRS Forms 8609 [with parts I and II (the top and bottom sections) completed] to DHCD for every building in the project for the first year of the compliance period. For every year of the compliance period thereafter, the Owner must submit Schedule A of Form 8609 for every building in the project. The Owners of all low income housing projects will also be required to submit to DHCD at least once each year information on tenant income and rent for each low income unit, in the form and manner designated by DHCD.

Review of Certification: DHCD will review the above-described certifications submitted by Owners for compliance with the requirements of Section 42 for all tax credit projects, including those buildings financed by the Rural Housing Services (RHS), formerly the Farmers Home Administration (FMHA), under its Section 515 Program, and buildings of which at least 50% of the aggregate basis (including land and the building) is financed with the proceeds of tax-exempt bonds and administered by MHFA or MDFA.

The submission and review of certifications described above shall be made at least annually covering each year of the compliance period which is equal to 15 taxable years beginning with the first year the tax credit is taken. DHCD reserves the right to continue monitoring for any additional term that the Agreement remains in effect.

III. Records Review

DHCD will conduct a records review of a project's Low Income units which have been selected for on-site inspection pursuant to section IV below.

The records review will include an examination of the annual Low Income certifications, the documentation the Owner has received supporting the certifications, and the rent records for the tenants in

those units. The Owner must have definitive documentation to support the income certification. For example, in the case of a tenant receiving Section 8 housing assistance payments, a letter from the local housing authority will only be accepted if that statement notes the tax credit income limit for the tenant's family size in the municipality, states that the tenant's income does not exceed such tax credit income limit, and states the effective date of the certification.

In conjunction with the selection of units to be inspected under section IV below, DHCD will select the records to be reviewed randomly and in a manner that will not give an owner advance notice that tenant records for a particular year will or will not be reviewed. However, DHCD may give an owner reasonable notice that tenant record review will occur so that the owner may assemble the tenant records. The review of tenant records may be undertaken wherever the owner maintains or stores the records (either on-site or off-site).

In addition to the above procedures, DHCD will review the records from the first year of the compliance period for every project in order to establish initial eligibility for the Low Income Housing Tax Credit.

Buildings financed by the RHS under its Section 515 Program and buildings of which at least 50% of the aggregate basis (taking into account the building and land) is financed with the proceeds of tax-exempt bonds will be excepted from this records review provision if DHCD enters into an agreement with the RHS and/or MHFA or MDFA, providing among other terms and conditions that RHS and/or MHFA or MDFA must provide information concerning the income and rent of the tenants in the building to DHCD. DHCD may assume the accuracy of any such information provided by RHS, MHFA, or MDFA. DHCD shall review such information and determine that the income limitation and rent restriction of Section 42(g)(1) and (2) are met. However, if the information so provided is not sufficient for DHCD to make this determination, DHCD must request the necessary additional information directly from the Owner of the buildings.

The certifications and review under Sections I and II must be made at least annually covering each year of the 15-year compliance period. DHCD retains the right to require such certifications and review for any additional term that a Low Income Housing Tax Credit Regulatory Agreement between the owner and DHCD (or its successors) remains in effect.

IV. Building Inspection

DHCD will conduct an on-site inspection of all buildings in a project by the end of the second calendar year following the year the last building in the project is placed in service. The minimum number of units to be inspected will be the greater of twenty percent of the project's low income units or three low income units.

Following the initial inspection, DHCD will conduct an on-site inspection of all buildings in a project at least once every three years. The minimum number of units to be inspected will be the greater of twenty percent or the project's Low Income units or three Low Income units.

DHCD will select the Low Income units to be inspected randomly and in a manner that will not give an owner advance notice that a unit will or will not be inspected. However, DHCD may give an owner reasonable notice that an inspection of the building and Low Income units will occur so that the owner may notify tenants of the inspection.

DHCD Will review any health, safety, or building code violations reports or notices retained by the owner as required in Section I above and will determine:

- a. Whether the buildings and units are suitable for occupancy, taking into account state and local health, safety and building codes (or other habitability standards); or
- b. Whether the buildings and units satisfy, as determined by DHCD, the uniform physical condition standards for public housing established by HUD (24 CFR 5.703).

Regardless of whether DHCD makes its determination under a. or b. above, the project must continue to satisfy applicable state and local health, safety, and building codes. If DHCD becomes aware of any violation of these codes, it must report the violation under Section V below.

A building financed by RHS under its Section 515 program will be excepted from this inspection provision if RHS inspects the building (under 7 CFR part 1930) and the RHS and DHCD enter into a memorandum of understanding, or other similar arrangement, under which RHS agrees to notify DHCD of the inspection results.

DHCD retains the right to perform on-site inspections of the buildings of any project at least through the end of the compliance period and for any additional term that a Low Income Housing Tax Credit Regulatory Agreement and Declaration of Restrictive Covenants between the owner and DHCD remains in effect.

V. Notification Of Non-Compliance

DHCD will provide prompt written notice to the Owner if DHCD does not receive the certifications described above, does not receive or is not permitted to review the tenant income certifications, supporting documentation, and rent record described above, or discovers by inspection, review, or in some other manner, that the project is not in compliance with Section 42. DHCD will file Form 8823, "Low Income Housing Credit Agencies Report of Noncompliance of Building Disposition", with the IRS no later than 45 days after the end of the correction period and no earlier than the end of the correction period, whether or not the noncompliance or failure to certify is corrected. The correction period, as specified in the noncompliance notice to the Owner, shall not exceed 90 days from the date of the notice to the Owner, unless extended by DHCD for up to six months where DHCD determines that there is good cause for granting an extension. DHCD will retain records of noncompliance or failure to certify in accordance with applicable Treasury regulations. If noncompliance or failure to certify is corrected within three years after the end of the correction period, DHCD will file Form 8823 reporting the correction.

DHCD will report its compliance monitoring activities annually on Form 8610, "Annual Low Income Housing Credit Agencies Report".

Appendix B: Future Changes to the 2004 Allocation Plan

Without limiting the generality of DHCD's power and authority to administer, operate, and manage the allocation of Low Income Housing Tax Credits according to federal law, federal procedures and this Plan, DHCD shall make such determinations and decisions, publish administrative guidelines and rules, require the use of such forms, establish such procedures and otherwise administer, operate, and manage allocations of tax credits in such manner as may be, in DHCD's determination, necessary, desirable, or incident to its responsibilities as the administrator, operator, and manager of the Low Income Housing Tax Credit Program.

The Governor recognizes and acknowledges that DHCD may encounter situations which have not been foreseen or provided for in the Plan and expressly delegates to DHCD the authority to amend the Plan, after the public has had the opportunity to comment through the public hearing process, and to administer, operate, and manage allocations of tax credits in all situations and circumstances, including, without limiting the generality of the foregoing, the power and authority to control and establish procedures for controlling any misuse or abuses of the tax credit allocation system and the power and authority to resolve conflicts, inconsistencies or ambiguities, if any, in this Plan or which may arise in administering, operating, or managing the Low Income Housing Tax Credit Program.

During 2004, the Department will continue to examine its use of the Sustainable Development principles in evaluating projects that request assistance. Future Qualified Allocation Plans may have more explicit requirements for projects seeking tax credit allocations in order to assure their consistency with the principles. The Department intends to work closely with the development community and will seek their input in determining appropriate criteria.

The Governor further expressly delegates to DHCD the ability to amend this Plan to ensure compliance with federal law and regulations as such federal law may be amended and as federal regulations are promulgated governing tax credits.

Appendix C: Summary of Comments and Suggestions from the Public Process

During the process of developing the 2004 Qualified Allocation Plan, the Department of Housing and Community Development met with interested parties, including for-profit and non-profit developers, municipal officials, consultants, other public and private lenders, attorneys, syndicators, advocates, and other members of the affordable housing community. The Department solicited comments and suggestions on various aspects of the tax credit allocation process, including the priorities to be included in the 2004 allocation plan, the set-aside categories, the scoring system, the recommended cost limits, and the best approach to allocating the state housing credit.

In accordance with Section 42 federal requirements, DHCD held a public hearing in the Department's offices on January 5, 2004. Four interested parties presented testimony at the hearing; there were 17 people in attendance.

Staff to the chairman of the Legislature's Joint Committee on Housing and Urban Development testified in support of the proposed QAP, described legislative efforts at continued improvement in the state's housing efforts, and requested further linkage between the QAP provisions and smart growth and planning efforts underway at the local and regional levels. A representative of assisted living projects expressed concern that the cap on allocations to assisted living projects was too low.

An attorney from Greater Boston Legal Services stated concerns regarding the program's effectiveness in furthering fair housing goals, suggested that more tax credit projects be located in suburban communities rather than urban ones and noted, in particular, that the provisions of an existing executive order (EO 418) were counterproductive. She suggested the Department consider future revisions to scoring items within the Special Project Characteristics section. She also urged the Department to improve its data collection and analysis efforts so as to have better information regarding the program's impact on fair housing conditions. Greater Boston Legal Services offered the same testimony at the public hearing for the 2003 Qualified Allocation Plan.

In addition, DHCD received written comments from Preservation of Affordable Housing, Inc. encouraging continued consideration of housing preservation issues including funding sources, basis per-unit caps and the challenges/difficulties involved in preservation projects in the context of the Commonwealth's recently announced sustainable development principles.

Appendix D: The Massachusetts Low Income Housing Tax Credit Program

760 CMR 54.00 MASSACHUSETTS LOW INCOME HOUSING TAX CREDIT PROGRAM

Section

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54.01: Scope, Purpose and Applicability

(1) General. 760 CMR 54.00 explains the calculation of the low-income housing tax credit established by M.G.L. c. 23B, s.3, M.G.L. c. 62, s. 61 and M.G.L. c. 63, s. 31H (St. 1999, c. 127, s.s. 34, 82, 90). The Department of Housing and Community Development may allocate annually, for the five-year period beginning January 1, 2001 and ending December 31, 2005, Massachusetts low-income housing tax credit in the amount set forth in M.G.L. c. 23B, s.3, M.G.L. c. 62, s. 61 and M.G.L. c. 63, s. 31H (St. 1999, c. 127, s.s. 34, 82, 90) for projects that qualify for the federal low-income housing tax credit under Section 42 of the Internal Revenue Code of 1986, as amended.

(2) Effective Date. 760 CMR 54.00 takes effect upon promulgation and applies to tax years beginning on or after January 1, 2001.

54.02: Definitions

For purposes of 760 CMR 54.00 et seq., the following terms have the following meanings, unless the context requires otherwise:

Act, M.G.L. c. 23B, s. 3, M.G.L. c. 62, s. 61 and M.G.L. c. 63, s. 31H (St. 1999, c. 127, s. s. 34, 82, 90).

Allocation of Massachusetts Credit, the award by the Department of the authorized Massachusetts low-income housing tax credit among qualified Massachusetts projects.

Allotment, in the case of a qualified Massachusetts project owned by an unincorporated flow through entity, such as a partnership, limited liability company or joint venture, the share or portion of credit allocated to the qualified Massachusetts project that, consistent within and subject to 760 CMR 54.06, may be claimed by a taxpayer who is designated a member or partner of such entity or by a transferee of such member or partner.

Building Identification Number, the identification number assigned to each building in a qualified Massachusetts project by the Department.

Code, the Internal Revenue Code of 1986, as amended and in effect for the taxable year.

Commissioner, the Commissioner of Revenue.

Compliance Period, the period of 15 taxable years beginning with the first taxable year during which a qualified Massachusetts project first meets all of the requirements of 760 CMR 54.08. The following text is effective 11/24/2000

Credit Period the five-year period during which a qualified Massachusetts project is eligible for the Massachusetts low-income housing tax credit. The credit period begins with the taxable year in which a project meets all of the requirements of 760 CMR 54.08 and ends five years later.

Department, the Department of Housing and Community Development.

Eligibility Statement a statement authorized and issued by the Department certifying that a given project is a qualified Massachusetts project and setting forth the annual amount of the Massachusetts low-income housing tax credit allocated to the project. The Department shall only allocate tax credit to qualified Massachusetts projects consisting of one or more buildings that are all placed in service on or after January 1, 2001.

Federal Carryover Allocation federal carryover allocation of a tax credit where a federal low-income housing tax credit is allocated under Section 42 (h)(1)(E) or (F) of the Code prior to the calendar year in which the buildings comprising the project are placed in service.

Federal Low Income Housing Tax Credit the federal tax credit as provided in Section 42 of the Code.

Low income Project, a qualified low-income housing project, as defined in Section 42 (g)(1) of the Code, which has restricted rents that do not exceed 30% of the applicable imputed income limitation under said Section 42 of the Code, for at least 40% of its units occupied by persons or families having incomes of 60% or less of the median income or for at least 20% of its units occupied by persons or families having incomes of 50% or less of the median income.

Median Income, the area median gross income as such term is used in Section 42 of the Code, and which is determined under United States Department of Housing and Urban Development guidelines and adjusted for family size.

Placed in Service, this term shall have the same meaning as the term is given under Section 42 of the Code and the federal regulations thereunder.

Qualified Massachusetts Project, a low-income project located in the Commonwealth which meets the requirements of M.G.L. c. 23B, s.3, M.G.L. c. 62, s. 61 and M.G.L. c. 63, s. 31H (St. 1999, c. 127, s.s. 34, 82, 90) and whose owner enters into a regulatory agreement.

Regulatory Agreement an agreement between the owner of a qualified Massachusetts project and the Department recorded as an affordable housing restriction under M.G.L. c. 184 with the registry of deeds or the registry district of the land court in the county where the project is located that requires the project to be operated in accordance with the requirements of 760 CMR 54.00, and M.G.L. c. 23B, s.3, M.G.L. c. 62, s. 61 and M.G.L. c. 63, s. 31H (St. 1999, c. 127, s. s. 34, 82, 90) for not less than 30 years from the expiration date of the compliance period.

Taxpayer any person, firm, or other entity subject to the personal income tax under the provisions of M.G.L. c. 62, or any corporation subject to an excise under the provisions of M.G.L. c. 63.

54.03: Amount of Credit Authorized

(1) Authorized Amount. The amount of Massachusetts low-income housing tax credit authorized to be allocated in each year during the five year period commencing January 1, 2001 and ending December 31, 2005 equals the sum of

(a) the lesser of 50% of the federal per capita low-income housing tax credit awarded to the Commonwealth in such year or \$4,000,000;

(b) unused Massachusetts low-income housing tax credit, if any, for all preceding calendar years; and The following text is effective

11/24/2000

(c) any Massachusetts low-income housing tax credit returned to the Department. Under M.G.L. c. 62, s. 61(c)(3) and M.G.L. c. 63, s. 31H(c)(3), an amount of Massachusetts low-income housing tax credit equal to the annual credit allocation awarded by the Department to a project is to be claimed each year for five tax years.

(2) Example. Assume the Department allocates \$3 million of 2001 Massachusetts low-income housing tax credit and \$6 million of 2001 federal low-income housing tax credit equally among 40 projects such that each project receives a federal credit award of \$150,000 and a Massachusetts low-income housing tax credit award of \$75,000. Assume further that each project is owned by an individual who retains all rights to claim the credit allocated. If the projects are placed in service on January 1, 2001 and no carryover or recapture provisions apply, each individual owner would be eligible to claim \$150,000 in federal low-income housing tax credit in 2001 and in each of the following nine years and \$75,000 in Massachusetts low-income housing tax credit in 2001 and in each of the following four years.

54.04: Eligible Projects

(1) Project Eligibility. Three types of qualified Massachusetts projects are eligible for an allocation of Massachusetts low-income housing tax credit:

- (a) projects to which the Department has made a prior allocation of federal low-income housing tax credit,
- (b) projects to which the Department makes a simultaneous allocation of federal low-income housing tax credit and
- (c) projects with respect to which the federal low-income housing tax credit is allowable by reason of Section 42(h)(4) of the Code applicable to buildings financed with tax exempt bonds.

(2) Prioritization by the Department. The Department shall amend or supplement its existing qualified allocation plan or its program guidelines, or both, to provide taxpayers guidance on how Massachusetts low-income housing tax credit will be allocated among competing projects. Such guidance shall adhere to the statutory requirements of providing the least amount of combined federal and Massachusetts low-income housing tax credit necessary to ensure financial feasibility of selected projects while allocating the total available Massachusetts low-income housing tax credit among as many qualified Massachusetts projects as fiscally feasible. Subject

to these statutory constraints, the Department may, in its discretion, provide guidance that

- (a) requires owners of projects with more than a designated dollar amount of federal credit to fund a portion of project equity from funds attributable to the Massachusetts low-income housing tax credit,
- (b) encourages owners of certain projects to raise equity primarily using the Massachusetts low-income housing tax credit while using a minimal amount of the so-called 9% federal low-income housing tax credit,
- (c) encourages the creation of projects funded through a combination of Massachusetts low-income housing tax credit and the so-called 4% federal low-income housing tax credit allowable to buildings financed with tax-exempt bonds, and
- (d) encourages the creation of any other projects that the Department deems to be consistent with the statutory goal of increasing the overall number of low-income housing units.

54.05: Eligible Recipients

Any person or entity (of whatever type) with an ownership interest in a qualified Massachusetts project and who receives an allocation of federal low-income housing tax credit with respect to such project is eligible to receive an allocation of Massachusetts low-income housing tax credit with respect to such project. The following text is effective 11/24/2000.

54.06: Allotment of Credit Among Partners, etc.

Whenever an owner of a qualified Massachusetts project with respect to which Massachusetts low-income housing tax credit has been allocated is an unincorporated flow-through entity, such as a partnership, limited liability company or joint venture, the entity may allot the Massachusetts tax credit available to the entity among persons designated by it as partners or members in such amounts or proportions as they may agree in the organizational documents governing such entity, provided that the owner certifies to the Commissioner the amount of Massachusetts low-income housing tax credit allotted to each member or partner on a form designated by the Commissioner. The allotment of Massachusetts low-income housing tax credit need not follow or be consistent with the allocation, as the word is used in Section 704(b) of the Code, of other partnership items (e.g., income, loss, deduction or credit, including the federal low-income housing tax credit). Similarly, whenever Massachusetts low-income housing tax credit is allocated with respect to a qualified Massachusetts project that is owned through a joint tenancy or similar ownership arrangement, the owners of such project may allot the right to claim the Massachusetts low-income housing tax credit allocated with respect to such project among themselves

in such amounts as they agree, without regard to their actual ownership interest in the project, provided that the owners certify to the Commissioner the amount of

Massachusetts low-income housing tax credit allotted to each owner on a form designated by the Commissioner.

54.07: Transferability of Credit

(1) Transferors, Transferees. Any taxpayer with an ownership interest in a qualified Massachusetts project with respect to which there has been allocated Massachusetts low-income housing tax credit and any taxpayer to whom the right to claim Massachusetts low-income housing tax credit has been allotted or transferred may transfer the right to claim unclaimed Massachusetts low-income housing tax credit to any other Massachusetts taxpayer eligible to claim a federal low-income housing tax credit with respect to the original or a different qualified Massachusetts project without the necessity of transferring any ownership interest in the original project or any interest in the entity which owns the original project. The transferor must transfer all credit attributable to periods after the transfer date agreed upon by the parties. For treatment of carry forward credit, see 760 CMR 54.10.

(2) Transfer Contract Requirements. A taxpayer, owning an interest in a qualified Massachusetts project or to whom the right to claim Massachusetts low-income housing tax credit has been allotted or transferred, who transfers his, her or its credit such that credit may be claimed by a taxpayer without ownership in the project and without an interest in the entity that owns the project must enter into a transfer contract with the transferee. The transfer contract must specify the following:

- (a) Building Identification Numbers for all buildings in the project;
- (b) the date each building in the project was placed in service;
- (c) the 15-year compliance period for the project;
- (d) the schedule of years during which the credit may be claimed and the amount of credit previously claimed; and
- (e) the taxpayer or taxpayers that are responsible for paying recapture if recapture should occur.

The transferring party shall attach a copy of this contract to the transfer statement required under 760 CMR 54.13(4).

(3) Transferred Eligibility to Claim Credit. Any taxpayer who is a transferee of the right to claim a Massachusetts low-income housing tax credit with respect to a qualified Massachusetts project may, provided all transfer

requirements and all other requirements for claiming such credit are met, claim such credit notwithstanding the fact that the credit may initially have been allocated to a taxpayer paying a different income tax (i.e., personal or corporate)

(4) Sale of Credit is Sale of Capital Asset. The sale of Massachusetts low-

income housing tax credit will be treated as the sale of a capital asset under the Massachusetts personal income tax or the net income measure of the corporate excise. The following text is effective 11/24/2000

(5) Examples. The following examples illustrate the application of 760 CMR 54.07:

- (a) Example 1. If taxpayer X receives an allotment of Massachusetts low-income housing tax credit as a partner in a partnership that owns a qualified Massachusetts project, taxpayer X may transfer the Massachusetts low-income housing tax credit allotted to it to taxpayer Y, whether or not taxpayer Y is a partner in the partnership, so long as taxpayer Y is entitled to claim a federal low-income housing tax credit with respect to any qualified Massachusetts project.
- (b) Example 2. Credit is allocated with respect to a project owned by a limited liability company and allotted to individuals who are members in the company. One of the members may sell his or her credit to a corporation, whether or not such corporation is a member in the company, so long as the corporation is entitled to claim a federal low-income housing tax credit with respect to any qualified Massachusetts project.

54.08: Prerequisites to Claiming Credit

When Massachusetts low-income housing tax credit is allocated with respect to a qualified Massachusetts project, such credit may not be claimed by any taxpayer with respect to any building in such project unless and until

- (1) all buildings in such project have been placed in service, and
- (2) the project has met the minimum set-aside and occupancy requirements of Section 42(g) of the Code. Before the end of the first taxable year in which credit is claimed, the taxpayer must record a Regulatory Agreement in a form acceptable to the Department with respect to such project.

54.09: Placed in Service Requirement; Time for Claiming Credit

(1) Placed in Service Requirement. All buildings in a project must generally be placed in service in the year in which the allocation of Massachusetts low-income housing tax credit is made. Notwithstanding the foregoing sentence:

- (a) whenever a project qualifies for a federal carryover allocation under Section 42(h)(1)(E) or (F) of the Code and the federal regulations thereunder, such project may continue to be a qualified Massachusetts project if the owner of the project enters into a satisfactory carryover allocation agreement with the Department prior to the end of the year in which the allocation of credit is made; and
- (b) with respect to a project described in 760 CMR 54.04(1)(c),

such project may continue to be a qualified Massachusetts project if, in the judgment of the Department, the project would otherwise meet all of the requirements for a federal carryover allocation under Section 42(h)(1)(E) or (F) of the Code and the federal regulations thereunder and the owner of the project enters into a satisfactory carryover allocation agreement with the Department prior to the end of the year in which the allocation of credit is made.

The Department shall provide a form of Massachusetts carryover allocation agreement for the Massachusetts low-income housing tax credit.

(2) Timing of Claiming Credit. Any taxpayer holding the right to claim Massachusetts low-income housing tax credit with respect to a qualified Massachusetts project may claim a pro rata portion of the annual amount of Massachusetts low-income housing tax credit allocated with respect to such project for the calendar year in which such project first meets the conditions described in 760 CMR 54.08, with proration based on the portion of such calendar year during which the project meets those conditions. Any amount of annual credit deferred on account of proration may be claimed in the sixth tax year, assuming the project remains qualified.

(3) Early Credit Election. Notwithstanding the generally applicable timing for claiming Massachusetts low-income housing tax credit described in 760 CMR 54.09(2), an owner of a qualified Massachusetts project may elect to accelerate the time for claiming the credit. Provided that the project first meets the conditions described in 760 CMR 54.08, an owner of such qualified Massachusetts project may file a notice with the Commissioner in a form to be determined by the Commissioner that the owner has elected to accelerate the credit. The following text is effective 11/24/2000

(4) Effect of Early Credit Election. When an owner of a qualified Massachusetts project makes an early credit election in the first year of the credit period and such project meets the requirements for making such an election, then notwithstanding 760 CMR 54.09(2), any taxpayer holding the right to claim Massachusetts low-income housing tax credit with respect to

such project shall claim the taxpayer's share of the project's entire annual allocation of Massachusetts low-income housing tax credit for the taxable year in which such election is validly made, without proration or adjustment on account of the date during such year on which the project is placed in service or on which such election is made, subject to any other applicable limitations.

(5) Examples. The following examples illustrate the application of 760 CMR 54.09.

(a) Example 1. Assume \$100,000 of Massachusetts low income housing tax credit is allocated with respect to a project in 2001. The project is owned by one individual who retains the right to claim such credit. No Massachusetts carryover allocation agreement under 760 CMR.54.09(1) has been entered into. The individual's tax year coincides with the calendar year. If the project meets the conditions described in 760 CMR 54.08 and is placed in service on October 1, 2001, then the individual holding the right to claim such credit may claim \$25,000 in Massachusetts low-income housing tax credit on his or her Massachusetts tax return for the year 2001 subject to any other applicable limitations. The individual would be expected to claim \$100,000 on his or her Massachusetts tax returns for each of the years 2002, 2004, 2004, and 2005, and to claim \$75,000 on his or her Massachusetts tax return for the year 2006, assuming the project remains qualified and the individual retains the right to claim all of the credit.

(b) Example 2. The same individual elects to take the early credit option instead of the pro rata approach. The individual may claim \$100,000 in Massachusetts low income housing tax credit on his or her tax return for 2001, and \$100,000 per year for each of the subsequent four years.

(c) Example 3. The same individual has a tax year that runs from July 1 to June 30. The individual elects to take the early credit option. The individual takes the \$100,000 credit available on October 1, 2001 in his tax year that ends on June 30, 2002 and \$100,000 per year for each of the taxpayer's subsequent four tax years.

54.10: Carryforward of Credit

- (1) Carryforward Period. Any amount of the credit that exceeds the claimant's tax due may be carried forward to any of the five subsequent taxable years.
- (2) Transfer of Carryforward. A taxpayer who transfers an unclaimed

portion of the credit pursuant to 760 CMR 54.07(1) may choose whether or not to include carryforward credit from prior years in the transfer.

(3) Transferee Treated Like Original Owner. For the purpose of determining the carryforward period, the transferee shall be bound by the same schedule for claiming a credit as the taxpayer originally entitled to the credit as an owner of a qualified Massachusetts project, regardless of how often the credit has been transferred.

54.11: Limitations on Credit; Ordering of Credit

(1) Limitations on Credit. The credit may not be applied to increase the maximum amount of credit allowed under M.G.L. c. 63, or to reduce the minimum corporate excise imposed under M.G.L. c. 63.

(2) Ordering of Credit. The credit may be applied in combination with other credits allowed under M.G.L. c. 63 in any order. Similarly, the credit may be applied in combination with other credits allowed under M.G.L. c. 62 in any order.

(3) Credit Nonrefundable. The credit is not refundable to the taxpayer. The following text is effective 11/24/2000.

54.12: Recapture

(1) Recapture; Disallowance. Whenever an event or circumstance occurs with respect to a qualified Massachusetts project that results in any recapture of federal low-income housing tax credit, any Massachusetts low-income housing tax credit claimed with respect to the project shall also be subject to recapture in the amount described below, and any Massachusetts low-income housing tax credit allocated to such project and not yet claimed as of the date of the recapture event shall be disallowed. Notwithstanding any agreement between transferor and transferee, each taxpayer who has claimed any portion of the Massachusetts low-income housing tax credit allocated to the project in question shall be liable for payment of his, her or its respective recapture amount as specified in 760 CMR 54.12(3).

(2) Recapture Period. Massachusetts low-income housing tax credit allocated with respect to a project is subject to recapture (and disallowance to the extent not yet claimed) at any time during the 15-year compliance period if the project is subject to recapture of federal low-income housing tax credit.

(3) Amount of Recapture. The amount of Massachusetts low-income housing tax credit to be recaptured from any taxpayer upon the occurrence of a recapture event equals the product of

- (a) the Massachusetts low-income housing tax credit claimed by such taxpayer prior to the recapture event times
- (b) the recapture fraction. The recapture fraction is a fraction in which the numerator is the amount of all federal low-income housing tax credit recaptured with respect to the project and the denominator is the amount of all federal low-income housing tax credit previously claimed with respect to the project.

(4) Timing of Recapture. The amount of recapture of the Massachusetts low-income housing tax credit shall be reported and shall be subject to tax in the taxable year during which the federal recapture event takes place.

(5) Example. The following example illustrates the application of 760 CMR 54.12. Assume, the owner of a qualified Massachusetts project is a calendar year taxpayer. The annual credit amount allocated to the project is \$20,000. The project meets the requirements of 760 CMR 54.08 on October 1, 2001. Taxpayer makes an early credit election and takes a \$20,000 credit for tax year 2001. Taxpayer takes a second \$20,000 credit for tax year 2002. On April 1, 2004, the project goes out of compliance and becomes subject to federal recapture. No credit is available to taxpayer for tax years 2004, 2004 and 2005. The \$40,000 credit previously taken by the taxpayer is subject to recapture according to the formula in 760 CMR 54.12(3).

54.13: Reporting and Recordkeeping Requirements

(1) Taxpayer Requirements. In order to claim the credit, a taxpayer must provide to the Commissioner the following:

- (a) eligibility statement as provided in 760 CMR 54.13(2);
- (b) allotment certification, if applicable, as provided in 760 CMR 54.13(3);
- (c) transfer statement, if applicable, as provided in 760 CMR 54.13(4) (with a copy of transfer contract, if applicable, as provided in 760 CMR 54.07(2)); and
- (d) Massachusetts carryover allocation agreement, if applicable, as provided in 760 CMR 54.09(1).

(2) Eligibility Statement. The Department shall adopt a form of eligibility statement to be issued by the Department evidencing a qualified Massachusetts project's eligibility for Massachusetts low-income housing tax credit. Each taxpayer claiming any Massachusetts low-income housing tax credit with respect to a project shall file a copy of the eligibility statement with each Massachusetts tax return on which any Massachusetts

low-income housing tax credit is claimed.

(3) Allotment Certification. The Commissioner, in consultation with the Department, shall provide a form of allotment certification to be filed by any unincorporated flow-through entity

- (a) that is the owner of a project with respect to which Massachusetts low-income housing tax credit has been allocated or The following text is effective 11/24/2000
- (b) to which the right to claim a Massachusetts low-income housing tax credit has been allotted or transferred. The entity shall file such certification with the Commissioner following the

close of the first taxable year in the credit period or the first taxable year the entity holds the right to claim credit, whichever is later. Such certification shall provide the name and federal taxpayer identification number of each taxpayer with an interest in the entity on the date the project met all of the requirements of 760 CMR 54.08, and shall also indicate the amount of Massachusetts low-income housing tax credit allotted to each such taxpayer. The certification shall also contain such other information as the Commissioner may from time to time require. Each taxpayer claiming any Massachusetts low-income housing tax credit by way of a flow-through entity shall file a copy of such certification with each Massachusetts tax return on which any Massachusetts low-income housing tax credit is claimed.

(4) Transfer Statement. The Commissioner, in consultation with the Department, shall promulgate a form of transfer statement to be filed by any person who transfers the right to claim Massachusetts low-income housing tax credit with respect to a qualified Massachusetts project. The transfer statement shall be required in addition to the transfer contract required in 760 CMR 54.07(2). The transferor shall file a transfer statement with the Commissioner within 30 days after transfer. The transferor shall also provide a copy of such statement to the owner of the project with respect to which the transferred credit was allocated within 30 days after transfer. The transfer statement shall provide the name and federal taxpayer identification number of each taxpayer to whom the filing transferor transferred the right to claim any Massachusetts low-income housing tax credit with respect to the project and shall also indicate the amount of Massachusetts low-income housing tax credit, including any carry forward credit, transferred to each such person or entity. The statement shall also contain such other information as the Commissioner may from time to time require. A copy of the transfer contract, if required under 760 CMR 54.07(2), shall be attached

to the transfer statement. Each taxpayer claiming any Massachusetts low-income housing tax credit shall file with each Massachusetts tax return on which any Massachusetts low-income housing tax credit is claimed copies of all transfer statements and transfer contracts necessary to enable the Commissioner to trace the claimed credit to the credit that was initially allocated with respect to the project. Each project owner shall file copies of all transfer statements and transfer contracts received regarding a project with such owner's annual Massachusetts tax or informational return.

(5) Record keeping Requirements. Owners of qualified Massachusetts projects and taxpayers that transfer or claim credit with respect to such projects shall be required to keep all records pertaining to credit until the expiration of the regulatory agreement; if a Massachusetts carryover allocation agreement is entered into with the Department under 760 CMR 54.09(1), the records must

include a copy of the Massachusetts carryover allocation agreement and documents relevant thereto.

54.14: Application Process and Administrative Fees

(1) Application. Project applicants seeking an allocation of Massachusetts low-income housing tax credit shall include a request for such credit allocation in the same application to be filed with the Department through which such proponent requests an allocation of federal low-income housing tax credit. With respect to projects described in 760 CMR 54.04(1)(c), the request for Massachusetts low-income housing tax credit shall be made in the form of a letter to the Department accompanied by:

- (a) a copy of the applicant's submission to the agency providing the tax-exempt bond financing for the project; and
- (b) such additional information as would be included in an application to the Department for a federal low-income housing tax credit allocation. The Department shall issue guidance describing any additional information to be included with credit requests. The Department may require that the applicant provide analyses of alternative funding scenarios that allow the Department to evaluate the comparative efficiency of allocating varying levels of federal and Massachusetts low-income housing tax credit to such proposed project.

The following text is effective 11/24/2000

(2) Filing Fee. Each application seeking an allocation of Massachusetts low-income housing tax credit shall be accompanied by a filing fee set by the Department which shall be payable to the Commonwealth of Massachusetts.

54.15: Reference to Federal Credit Rules

Unless otherwise provided in M.G.L. c. 23B, s.3, M.G.L. c. 62, s. 61 and M.G.L. c. 63, s. 31H (St. 1999, c. 127, s.s. 34, 82, 90) or 760 CMR 54.00 or unless the context clearly requires otherwise, the Massachusetts low-income housing tax credit shall be administered and allocated in accordance with the standards and requirements applicable to the federal low-income housing tax credit as set forth in Section 42 of the Code and the federal regulations adopted there under.

54.16: Authorization of Department to Take Further Actions

Nothing in 760 CMR 54.00 shall be deemed to limit the authority of the Department to take all actions deemed by the Department in its discretion to be consistent with the authority granted the Department under M.G.L. c. 23B, s.3, M.G.L. c.62, s. 61 and M.G.L. c. 63, s. 31H (St. 1999, c. 127, s.s. 34, 82, 90).

REGULATORY AUTHORITY

760 CMR 54.00: M.G.L. c. 23B, s.s. 3, 6; c. 62, s.s. 61 (a), (c)(7), (e), (f)(4), (g); M.G.L. c. 63, s. s. 31H (a), (c)(7), (e), (f)(4), (g).

Appendix E: Glossary of Terms

Tax credit applicants should note that the federal rules governing Low Income Housing Tax Credits are complex. All developers should consult a qualified tax attorney or accountant to determine eligibility for the credit. The terms defined below are not meant to substitute for a reading of Section 42 but are only meant to provide prospective applicants with a general understanding of commonly used terms.

4% Credit The term “4% credit” refers to the 30% tax credit, which has a present value equal to 30% of the project’s qualified development costs, or approximately 4% per year over a 10-year period. The “4% credit” is available in two situations: 1) Development costs of new building or substantial rehabilitation developed with a federal subsidy, including tax-exempt financing; and 2) Acquisition cost of an existing building, which must also be substantially rehabilitated (the greater of \$3,000 per low income unit or 10 % of the depreciable basis of the building) in order to qualify for the credit for the acquisition cost.

9% Credit The term “9% credit” refers to the 70% tax credit, which has a present value equal to 70% of the project’s qualified development costs, or approximately 9% per year over a 10-year period. The “9% credit” is available for the development costs of a new building or substantial rehabilitation of an existing building without a federal subsidy.

Applicable Fraction The smaller of the “unit fraction” or the “floor space fraction” (see Section 42(c)(1) of the Internal Revenue Code. The “unit fraction” is the fraction of qualified low income units in the building. The “floor space fraction” is the fraction of total floor space contained in the qualified low income units in the building.

Carryover Allocation An exception to the general rule that a credit allocation is valid only if the allocation occurs within the calendar year in which the building is placed in service. Under this type of allocation, 1) more than 10 percent of the project's reasonably anticipated basis (costs) must be incurred by the end of the calendar year in which the allocation is made; and 2) the building(s) in the project must be placed in service by the end of the second calendar year following the year of the allocation. “However, projects which receive reservations in the second half of any calendar year will have six months from the date of allocation (or until the following June 30, if later) to incur more than 10 percent of the project’s reasonably anticipated basis as of the end of the second calendar year following allocation”.

Compliance Monitoring DHCD must actively monitor all tax credit projects to determine if they are complying with the various requirements of the tax credit program, which include, but are not limited to, determining whether the

rents charged on tax credit units exceed maximum allowable rents and whether the incomes of tenant households at initial occupancy and during subsequent reviews exceed maximum allowable income limits.

**Department of Housing
& Community Development**

The Department of Housing and Community Development (DHCD) is the designated tax credit allocating agency for the Commonwealth of Massachusetts. DHCD administers federal community development programs, administers the state's public housing programs, coordinates its anti-poverty efforts, and provides a variety of services to local government officials. The focus of DHCD is to make state and federal funds and technical assistance available to strengthen communities and help them plan new developments, encourage economic development, revitalize older areas, improve local government management, build and manage public housing, stimulate affordable housing through the private sector and respond to the needs of low- income people.

Eligible Basis

The sum of the eligible cost elements that are subject to depreciation, such as expenditures for new construction, rehabilitation, building acquisition, and other costs used to determine the cost basis of the building(s) (see IRC Section 42 for a more detailed definition). The eligible basis is increased by 30 percent if the building(s) in the project are located in a difficult development area or qualified census tract.

EUR

Title VI subtitle A of the Cranston-Gonzalez National Affordable Housing Act contains the Low Income Housing Preservation and Resident Homeownership Act of 1990 ("LIHPRHA" or Expiring-Use Restriction ("EUR") program). Contracts under low-interest loan programs of the 1960's & 1970's permitted certain owners to prepay federally assisted mortgages after the twentieth year of the forty year mortgage term. The statute's basic objectives are to assure that most of the "prepayment" inventory of HUD-assisted housing remains affordable to low income households and to provide opportunities for tenants to become homeowners

HOPE VI

In 1992, Congress created the Urban Revitalization Demonstration Program (otherwise known as HOPE VI) for the purpose of revitalizing severely distressed public housing developments. HOPE VI is funded by the U.S. Department of Housing and Urban Development to provide localities with funds and flexibility to reshape existing public housing neighborhoods. It can supply up to

\$50 million to transform an entire public housing development.

Internal Revenue Code

The Low Income Housing Tax Credit Program (LIHTC) is a housing program contained within Section 42 of the Internal Revenue Code of 1986, as amended, governs tax credits for owners or investors in low

income housing projects.

**Massachusetts Development
Finance Agency**

The Massachusetts Development Finance Agency (MDFA) was created by the Massachusetts legislature to expand economic development opportunities. MDFA funds its programs through the sale of taxable and tax-exempt bonds to private investors.

**Massachusetts Housing
Finance Agency**

The Massachusetts Housing Finance Agency (MHFA) was created by the Massachusetts legislature to expand rental and homeownership opportunities for low and moderate income households. MHFA funds its programs through the sale of taxable and tax-exempt bonds to private investors.

Qualified Basis

The portion or percentage of the eligible basis that qualifies for the tax credit. A building's qualified basis equals its eligible basis multiplied by its applicable fraction.

Section 42

Section 42 of the Internal Revenue Code of 1986, as amended, governs tax credits for owners or investors in low income housing projects, which has received an allocation under the terms of this plan.

TDC

Total Development Costs. Costs incurred for the purchase and/or rehabilitation of existing buildings or new construction. Development costs may include planning, oversight, relocation, demolition, construction or rehabilitation, reserves and all other costs necessary to develop the affordable housing project.

Ten Percent (10%) Test

In order to qualify for a carryover allocation, the developer's basis in the property at the end of the year in which the allocation is received must be more than ten percent of the amount that the project's basis is reasonably expected to be at the end of the second year following the allocation year. Basis consists of the project's depreciable costs and land that is reasonably expected to be part of the project. However, projects which receive reservations in the second half of the calendar year will have six months from the date of allocation to meet the ten percent test.

Appendix F.

The Department has developed the checklist below to assist potential applicants in assessing the consistency of their project with the Commonwealth's principles for development. The list reflects the key concepts contained in the principles. Greater consistency with the concepts listed indicates a project more likely to be consistent with the Commonwealth's preferences for development.

The full text of the principles as outlined in a memo from the Office for Commonwealth Development (OCD), follows the checklist.

Self-Assessment Checklist for Consistency with the Commonwealth's Ten Principles for Sustainable Development

Does your project have characteristics consistent with these concepts?

1.
 - ☐ Revitalization of town centers and neighborhoods,
 - ☐ Use and/or rehabilitation of existing infrastructure,
 - ☐ Redevelopment of brownfields,
 - ☐ Preservation and reuse of historic structures,
 - ☐ Rehabilitation of existing housing and schools?
2.
 - ☐ Compact, mixed-use development that fosters a sense of place?
3.
 - ☐ Equitable sharing of the benefits and burdens of development,
 - ☐ Consistency with inclusive community planning and social, economic, and environmental justice?
4.
 - ☐ Conservation of land and water,
 - ☐ Protection and restoration of environmentally sensitive resources including cultural and historic landscapes,
 - ☐ Increases in the quantity, quality and accessibility of open space?
5.
 - ☐ Waste reduction of water, energy and materials,
 - ☐ Construction of buildings and infrastructure that use land, energy, water and materials efficiently?
6.
 - ☐ Production of housing that is coordinated with the location of jobs, transit and services,
 - ☐ Development of housing that is compatible with a community's character and vision?
7.
 - ☐ Increased access to transportation options,
 - ☐ Located where a variety of transportation modes can be made available?
8.
 - ☐ Expanded access to educational and entrepreneurial opportunities,
 - ☐ Supportive of the growth of new and existing local businesses?
9.
 - ☐ Strengthens sustainable businesses,
 - ☐ Is supportive of economic development in industry clusters consistent with regional and local character?
 - ☐ Is consistent with local and regional plans that have broad public support and are consistent with these principles,
 - ☐ Fosters development with regional or multi-community benefit?



Commonwealth of Massachusetts OFFICE FOR COMMONWEALTH DEVELOPMENT

Mitt Romney, Governor ♦ Kerry Healey, Lt. Governor ♦ Douglas I. Foy, Chief

Enhancing Our Commonwealth

The Office for Commonwealth Development is dedicated to careful stewardship of our natural resources, wise investment in public infrastructure and the expansion of opportunity for all our residents. The beauty and bounty of Massachusetts are the result of decisions made in past generations; our choices today must create value and opportunity for all our residents now and in the future. To improve the health and wealth of all our communities, we must draw together the creativity of our people, the vitality of markets, the resources of government, and the natural treasures we have inherited to design and build communities of diversity and delight for Massachusetts.

The quality of life in all of Massachusetts depends upon growth decisions made in each unique community. Planning for growth in a vibrant Commonwealth means working with those communities to integrate the diverse needs for housing, jobs, services, transportation and historic, cultural, and natural resources. In order to achieve these objectives, the Office for Commonwealth Development will:

- Encourage the coordination and cooperation of all agencies.
- Invest public funds wisely in smart growth and equitable development.
- Give priority to investments that will deliver living wage jobs, transit access, housing, open space, and community-serving enterprises.
- Be guided by the following principles:
 1. **Redevelop first.** Support the revitalization of town centers and neighborhoods. Encourage reuse and rehabilitation of existing infrastructure rather than the construction of new infrastructure in undeveloped areas. Give preference to redevelopment of brownfields, preservation and reuse of historic structures and rehabilitation of existing housing and schools.
 2. **Concentrate development.** Support development that is compact, conserves land, integrates uses, and fosters a sense of place. Create walkable districts mixing commercial, civic, cultural, educational and recreational activities with open space and housing for diverse communities.
 3. **Be fair.** Promote equitable sharing of the benefits and burdens of development. Provide technical and strategic support for inclusive community planning to ensure social, economic, and environmental justice. Make regulatory and permitting processes for development clear, transparent, cost-effective, and oriented to encourage smart growth and regional equity.
 4. **Restore and enhance the environment.** Expand land and water conservation. Protect and restore environmentally sensitive lands, natural resources, wildlife habitats, and cultural and historic landscapes. Increase the quantity, quality and accessibility of open space. Preserve critical habitat and bio-diversity. Promote developments that respect and enhance the state's natural resources.

5. **Conserve natural resources.** Increase our supply of renewable energy and reduce waste of water, energy and materials. Lead by example and support conservation strategies, clean power and innovative industries. Construct and promote buildings and infrastructure that use land, energy, water and materials efficiently.
6. **Expand housing opportunities.** Support the construction and rehabilitation of housing to meet the needs of people of all abilities, income levels and household types. Coordinate the provision of housing with the location of jobs, transit and services. Foster the development of housing, particularly multifamily, that is compatible with a community's character and vision.
7. **Provide transportation choice.** Increase access to transportation options, in all communities, including land and water based public transit, bicycling, and walking. Invest strategically in transportation infrastructure to encourage smart growth. Locate new development where a variety of transportation modes can be made available.
8. **Increase job opportunities.** Attract businesses to locations near housing, infrastructure, water, and transportation options. Expand access to educational and entrepreneurial opportunities. Support the growth of new and existing local businesses.
9. **Foster sustainable businesses.** Strengthen sustainable natural resource-based businesses, including agriculture, forestry and fisheries. Strengthen sustainable businesses. Support economic development in industry clusters consistent with regional and local character. Maintain reliable and affordable energy sources and reduce dependence on imported fossil fuels.
10. **Plan regionally.** Support the development and implementation of local and regional plans that have broad public support and are consistent with these principles. Foster development projects, land and water conservation, transportation and housing that have a regional or multi-community benefit. Consider the long-term costs and benefits to the larger commonwealth.